

Legislation

Alaska State Legislature



SENATOR
ARLISS STURGULEWSKI

Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

2957 SHELDON JACKSON STR
ANCHORAGE, ALASKA 99501

While in Juneau
P. O. BOX V
JUNEAU, ALASKA 99801
(907) 465-3818

Senate

MEMORANDUM

March 21, 1988

TO: All Members
Senate Joint Committee on Economic Recovery

FROM: Senator Arliss Sturgulewski *(signature)*

RE: Existing and proposed legislation

I have reviewed the existing and proposed legislation before the Senate Committee on Economic Recovery and would suggest that we concentrate on those specific pieces outlined in this memo.

I have used the following guidelines in the selection of this legislation.

1. The December 1, 1987 Briefing Paper by the Institute of Social and Economic Research (ISER) suggests several important considerations.

A. That state spending is part of the current economic problem because of high state budgets in the early 1980's. They stated, "Unless it [state spending] can be sustained [it] will have a destabilizing impact on the economy." We know now that we cannot sustain those high budgets with our present income.

B. That "the recession is progressively dissipating and is likely to end over the course of the coming year." If this view is correct, the state must be cautious in its response to the economic recovery to avoid disrupting the natural market forces and simply prolonging the adjustment period.

C. That "an increase in state spending will not hasten an enduring economic recovery unless the increased spending can be sustained or the state's basic industries increase their economic output to match a future decline in state spending." The state has a limited ability to sustain increased spending, however, all basic industry (oil, fish, timber, and mining) in the state show healthy signs of increased growth in the near future and will aide the economic recovery. This, of course, is the typical economic stimulus in most economies not government spending.

2. State financial programs such as AHFC, AIDEA and the various state loan programs have significant impact on the financial health of the economy because of the large dollar contribution that they represent. They should exercise maximum flexibility in their response to distressed borrowers without the state simply providing more funding which it has only a limited ability to do.

3. Because of the limited funding available from the state, it should encourage private sector financial institutions to respond to the economic recovery. This can be accomplished in two ways, one would be to assist private financial institutions in the refinancing of troubled loans; and two, to encourage new loans in businesses that will aide the economic recovery through job creation and economic growth in the state.

4. The distribution of cash into the economy has an immediate effect on the economy. The jobs bill that was recently passed will soon be having a positive impact throughout the state. Another source of cash is the permanent fund dividend distribution.

I would recommend that we endorse the following specific legislation and concepts for appropriate standing committee review:

A. The concept of a "Bridge Bank" is contained in SB 408. This legislation offers a potential for relieving the pressure of property management for private financial institutions and some state agencies. However, it should be structured to encourage private sector management, limited state contributions and provisions for eventual repayment of the contributions, to the state.

B. SB 471, which the committee endorsed previously, has several elements that I feel are beneficial to the economic recovery process. It will need further refinement in the Senate Finance Committee and I would recommend that they review setting a cap or maximum limit to the total amount of loan funds that can be guaranteed by AIDEA. This will prevent uncontrollable liability at some future date. I would also recommend that AIDEA develop guidelines for allowing private financial institutions to offer refinanced debt packages as well as guidelines for new business loans that will stimulate economic growth. Finally, in order to evaluate its progress, I would suggest a sunset date on the AIDEA loan guarantee program.

C. SJR , Urging a change under the IRS Code. This resolution petitions the IRS to review its policy of taxing forgiven negative equity in cases of foreclosure.

D. HJR , Relating to residential real estate. This resolution specifically petitions state loan programs and lending agencies to use the maximum flexibility at their disposal in order to keep their portfolios as active as possible.

E. HJR , Willow Park Demolition. Calls for the demolition of the substandard Willow Parking Housing Project with funding for the demolition spelled out in an agreement between the state and municipality. It further

calls upon the federal government to fund and carry out the relocation of the involved dislocated families. This project, in addition to being substandard, poses serious health concerns because of asbestos insulation.

F. HB 432, Authorizing the AHFC to accept trades in certain cases. This legislation would allow individuals to trade into mortgages of greater/lesser obligation with AHFC. This would allow borrowers with greater resources to purchase homes with larger mortgages making those loan packages active and those borrowing on the margin to trade into more affordable housing, once again reactivating those loans. The Labor and Commerce amended version includes a provision for reducing negative equity that should be reviewed in the committee hearing process.

G. HB , "Authorizing the Department of Community and Regional Affairs to modify the terms of its mortgage loans; and providing for an effective date." Allows the Housing Assistance Section to modify home loans in certain cases.

H. HB , Notice requirements on a Deed of Trust." Requires lender to inform the borrower in the note securing the loan of all methods of recourse in the event of default.

I. Investigate early dividend and/or increased dividend. Request the Alaska Permanent Fund managers to present the opportunity to provide an early dividend or a substantially higher dividend than currently projected for the year 1988.

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2

SENATE BILL NO. 408

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska stabilization assistance program; and providing for an effective date."

7

8

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

9

* Section 1. ALASKA STABILIZATION ASSISTANCE PROGRAM. (a) The purpose of the Alaska stabilization assistance program is to promote the stabilization of real property values in the state.

10

11

12

13

14

15

16

17

18

19

20

21

(b) The Alaska stabilization assistance fund is established in the Alaska Industrial Development and Export Authority. The authority may use money appropriated to the fund to carry out the purposes of this section. An appropriation to the Alaska stabilization assistance fund lapses to the fund from which it was appropriated July 1, 1992, unless specified otherwise in the appropriation act. Other receipts shall be separately accounted for and deposited into the general fund. Each year the authority shall notify the legislature of the amount of these receipts and the legislature may appropriate that amount into the Railbelt energy fund established under AS 37.05.153.

22

23

24

25

26

27

(c) To encourage lenders not to attempt to dispose of real property in the state that has been foreclosed upon or otherwise acquired through actions taken on defaulted loans until the real estate market in the state becomes more stable, the authority may enter into contracts to provide for the management of the property. However, the authority may provide for the management of property only through June 30, 1992.

28

* Sec. 2. This Act is repealed July 1, 1992.

29

* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

Funding Information
General Fund \$15,000,000
Other Funds -0-
\$15,000,000

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2

SENATE BILL NO. 409

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act making a special appropriation to the Alaska
7 stabilization assistance fund; and providing for an
8 effective date."

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

10 * Section 1. The sum of \$15,000,000 is appropriated from the Railbelt
11 energy fund (AS 37.05.153) to the Alaska stabilization assistance fund.

12 * Sec. 2. The appropriation made by sec. 1 of this Act lapses into the
13 Railbelt energy fund (AS 37.05.153) on July 1, 1992.

14 * Sec. 3. This Act takes effect on the effective date of a version of
15 an Act enacted by the Fifteenth Alaska State Legislature establishing the
16 Alaska stabilization assistance fund.

IN THE SENATE

BY HALFORD, FAIKS, UEHLING,
JOSEPHSON, STURGULEWSKI AND
ABOOD

SENATE BILL NO. 471

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act establishing a program in the
Alaska Industrial Development and Export
Authority to guarantee business loans and
to refinance debt; and providing for an
effective date."

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

* Section 1. AS 44.88 is amended by adding new sections
to read:

ARTICLE 6A. BUSINESS ASSISTANCE PROGRAM.

* Sec. 44.88.500. BUSINESS ASSISTANCE FUND. The business
assistance fund is established in the authority from
appropriations for the purpose. Subject to the requirements of
AS 44.88.500 - 44.88.599, the authority may use money in the
fund to guarantee loans, including loans made to refinance
existing loans, to business that qualify under AS 44.88.510 and
apply under AS 44.88.520.

* Sec. 44.88.510. APPLICANT QUALIFICATIONS. A business
enterprise may apply for a loan guarantee under AS 44.88.500 -

44.88.599. The authority may establish additional applicant qualifications by regulation and these qualifications may vary depending upon the type of business the applicant is engaged in.

* Sec. 44.88.520. APPLICATION. An applicant for a loan guarantee shall provide information required by regulation of the authority, which may include an economic benefit analysis prepared by a person acceptable to the authority together with other information.

* Sec. 44.88.530. POWERS RELATING TO LOAN GUARANTEES.
The authority may

(1) designate agents and delegate powers necessary to implement AS 44.88.500 - 44.88.599;

(2) adopt regulations to implement AS 44.88.500 - 44.88.599;

(3) establish terms and conditions for loan guarantees subject to the requirements of AS 44.88.500 - 44.88.599;

(4) make and execute contracts and other instruments to implement AS 44.88.500 - 44.88.599;

(5) acquire real or personal property by purchase, transfer, or foreclosure when the acquisition is necessary to protect an interest in the fund; and

(6) exercise any other power necessary to implement AS 44.88.500 - 44.88.599.

* Sec. 44.88.540. CONDITIONS OF LOAN GUARANTEES. (a) The authority may guarantee a loan under AS 44.88.500 - 44.88.599 if the

(1) loan is commercially reasonable, contains amortization provisions satisfactory to the authority, and is secured by adequate collateral, and if the net cash flow from the borrower provides adequate coverage for the debt service on the loan;

(2) term of the loan does not exceed 20 years;

(3) loan is originated with and serviced by a state chartered or federally chartered financial institution;

(4) portion of the loan not guaranteed by the authority is held by the originating financial institution or another financial institution approved by the authority; and

(5) loan is made to a business with a majority interest held by state residents.

(b) The authority may provide a guarantee from the fund for up to 90 percent of a loan that qualifies under AS 44.88.500 - 44.88.599. The ratio of the guarantee to the outstanding principal of the loan shall not increase over the term of the loan.

(c) The authority may not guarantee

(1) the payment of interest on the guaranteed portion of a loan; or

(2) more than \$1,000,000 per loan.

* Sec. 44.88.550. INTEREST. The maximum interest rate on a loan guaranteed by the authority is

(1) for a guarantee of 80 percent or more of the loan, one and one-half percentage points above the prime rate, as determined by the authority, on the day the loan guarantee is made; and

(2) for a guarantee of less than 80 percent of the loan, two and three-quarters percentage points above the prime rate, as determined by the authority, on the day the loan guarantee is made.

* Sec. 44.88.560. DEFAULT OR FORECLOSURE. (a) Amounts received toward satisfaction of a default on a loan guaranteed under AS 44.88.500 - 44.88.599 shall only be applied to pay principal of the loan until the entire principal balance of the loan has been repaid.

(b) The authority shall dispose of property acquired through default or foreclosure of a loan guaranteed under AS 44.88.500 - 44.88.599. Disposal shall be in a manner that serves the best interest of the state and may include the amortization of payments over a period of years.

* Sec. 44.88.570. SPECIAL ACCOUNT ESTABLISHED. (a) There is established as a special account within the fund the foreclosure expense account.

(b) The authority may expend money credited to the foreclosure expense account when necessary to protect the state's security interest in collateral on loans guaranteed or refinanced under AS 44.88.500 - 44.88.599 or to defray expenses incurred during a foreclosure proceeding after a default.

* Sec. 44.88.580. PREREQUISITE FOR OTHER LOANS.

Notwithstanding other provisions of law, a business enterprise that qualifies under AS 44.88.510 to apply for a loan guarantee under AS 44.88.500 - AS 44.88.599 shall apply for a loan guarantee before it may apply for a direct loan of state money under any other state loan program. Only after an application for the guarantee of a loan to be used for a particular purpose is rejected under AS 44.88.500 - 44.88.599 may a business enterprise apply for a direct state loan for that purpose.

* Sec. 44.88.599. DEFINITIONS. In AS 44.88.500 - AS 44.88.599.

(1) "fund" means the business assistance fund established under AS 44.88.500;

(2) "prime rate" means the lowest money center prime rate of interest that is published in the Wall Street Journal.

* Sec. 2. This Act takes effect immediately under AS
01.10.070(c).

1 IN THE SENATE

2 SENATE JOINT RESOLUTION NO.
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Urging a change under the Interna
6 Revenue Code in the tax treatment of the
7 transfer of a residence subject to a
8 mortgage that is a recourse loan when
9 the indebtedness on the residence is
10 discharged through foreclosure, repos-
11 session, or surrender of the property.

12 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 WHEREAS, under current provisions of the Internal Revenue Code and
14 pertinent regulations defining "gross income," a voluntary foreclosure,
15 repossession of real property, or surrender of property that serves as
16 collateral for an indebtedness is treated as a disposition similar to the
17 sale or exchange of real property; and

18 WHEREAS, if real property is transferred through foreclosure or repos-
19 session to satisfy a debt secured by the property or the property is sur-
20 rendered, the property owner may realize a gain or loss; and

21 WHEREAS in a foreclosure, repossession, or surrender, the difference
22 between the mortgage debt discharged and the fair market value of the
23 property given up is called "discharge of indebtedness" income; and

24 WHEREAS "discharge of indebtedness" income is taxable to the real
25 property owner as ordinary income if the loan discharged is a "recourse
26 loan," in which the owner is personally liable for repayment of the loan,
27 if the fair market value of the property foreclosed, repossessed, or
28 surrendered is less than the amount of the debt discharged, and if the
29 lending institution forgives payment of the balance of the underlying debt;

1 and

2 WHEREAS many Alaska homeowners have mortgages that are recourse loans
3 and

4 WHEREAS, having only a small equity in their residences and unable to
5 make current monthly mortgage payments in a declining economy, a number of
6 these homeowners have had their residences foreclosed on or repossessed;
7 and

8 WHEREAS, as an alternative to foreclosure or repossession, other
9 homeowners in similar circumstances have surrendered the mortgaged property
10 to the lending institution; and

11 WHEREAS, in a substantial number of the loans of these homeowners, the
12 fair market value of the property foreclosed on, repossessed, or surren-
13 dered is substantially less than the amount of the indebtedness discharged,
14 giving rise to a "discharge of indebtedness" income; and

15 WHEREAS, even after these homeowners lose their residences through
16 foreclosure, repossession, or surrender, the Internal Revenue Code and its
17 regulations may apply to impose substantial liability for taxation on the
18 homeowner's discharge of indebtedness income; and

19 WHEREAS the Alaska Legislature believes that the loss of a residence
20 through foreclosure, repossession, or surrender due to the homeowner's
21 financial problems in a time of economic uncertainty combined with incur-
22 rence of tax liability for that loss is inequitable and works a substantial
23 hardship on these families;

24 BE IT RESOLVED by the Alaska State Legislature that the Congress is
25 urged to amend the applicable Internal Revenue Code provisions to except
26 from treatment as income the liability of taxpayers incurring "discharge of
27 indebtedness" income tax liability under a recourse loan on foreclosed,
28 repossessed, or surrendered residential property in these circumstances.

29 COPIES of this resolution shall be sent to Lawrence B. Gibbs.

1 Commissioner of the Internal Revenue Service; and to the Honorable Te
2 Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable
3 Don Young, U.S. Representative, members of the Alaska delegation in
4 Congress.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

1 IN THE HOUSE

BY THE JOINT COMMITTEE ON ECONOMIC
RECOVERY (For the Subcommittee on
Housing and Banking)

2 HOUSE JOINT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the residential real estate
6 market.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS some areas of the state are experiencing a severe economic
9 crisis as evidenced by bankruptcies, foreclosures, business failures, and
10 the loss of homes and property values; and

11 WHEREAS the state is experiencing a difficult economic period, espe-
12 cially in the residential real estate market, and many persons are finding
13 it difficult to meet their financial obligations during these times; and

14 WHEREAS keeping people in their homes and facilitating the purchase
15 and sale of homes serves an important public purpose and is financially
16 beneficial to both the borrower and the lender; and

17 WHEREAS borrowers are anxious to continue to meet their financial
18 obligations, but there is a significant number of individuals who are under
19 severe risk of being unable to do so; and

20 WHEREAS many borrowers would be able to meet their financial obliga-
21 tions if various forms of debt restructuring were made possible; and

22 WHEREAS debt restructuring requires the cooperation of the various
23 parties to each real estate loan, including the borrower, the loan origina-
24 tor, the Alaska Housing Finance Corporation or other loan packager, the
25 secondary purchasers of the loans, and the various loan insurers; and

26 WHEREAS the state's economy would be greatly helped if the financial
27 institutions of the state would adjust their lending and collection pol-
28 icies to the present needs and abilities of their customers by using more
29 flexible approaches to stabilize and improve the economy of the state; and

1 WHEREAS present financing packages available to residential real
2 estate borrowers do not provide adequate market liquidity or ability to
3 buy, sell, or trade properties in today's economic circumstances in which
4 debt balances on the properties are nearly equal to or greater than the
5 values of the property; and

6 WHEREAS to some extent state agencies and the financial institutions
7 in the state have not yet developed a coherent policy that addresses the
8 current economic crises; and

9 WHEREAS the likelihood of loss or default is lessened if a market is
10 made more liquid, something that will benefit all participants in real
11 estate loans; and

12 WHEREAS the ability to buy, sell, and trade properties in a market
13 that has very high loan-to-value ratios can only be accomplished through
14 innovation and cooperation of the various parties to a real estate loan;
15 and

16 WHEREAS, in order for residents of the state to meet their financial
17 obligations, the parties to residential loans in the state must be willing
18 to negotiate more creative financing terms and conditions for the benefit
19 of all concerned; and

20 WHEREAS the Alaska Housing Finance Corporation is presently working
21 with the legislature, lending institutions, federal governmental agencies,
22 and private mortgage insurers to find creative ways of refinancing existing
23 mortgages and managing recent acquisitions in the residential real estate
24 market;

25 BE IT RESOLVED by the Alaska State Legislature that the various finan-
26 cial participants in the Alaska real estate market, including the Alaska
27 Housing Finance Corporation, the Department of Commerce and Economic Devel-
28 opment, the Department of Community and Regional Affairs, the Department of
29 Revenue, the Alaska Permanent Fund Corporation, and the various loan

servicers, guarantors, and insurers are urged to cooperate in developing innovative ways to restructure debt and to buy, sell, and trade properties for their collective benefit; and be it

FURTHER RESOLVED that economic stabilization of the residential real estate market be accomplished with the joint cooperation of the Alaska Housing Finance Corporation, the Department of Commerce and Economic Development, the Department of Community and Regional Affairs, the Department of Revenue, and the Alaska Permanent Fund Corporation and other agencies of the state and of lending institutions in the state as well as the Federal Housing Administration, the U.S. Department of Housing and Urban Development, the Veterans Administration, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, and private mortgage insurers; and be it

FURTHER RESOLVED that the legislature fully supports efforts on the part of the Alaska Housing Finance Corporation, the Department of Commerce and Economic Development, the Department of Community and Regional Affairs, the Department of Revenue, and the Alaska Permanent Fund Corporation to hold foreclosed-upon residential properties off the market in instances where such action makes long-term economic sense.

COPIES of this resolution shall be sent to the Honorable Steve Cowper, Governor; the Honorable J. Anthony Smith, commissioner of commerce and economic development; the Honorable David Hoffman, commissioner of community and regional affairs; the Honorable Hugh Malone, commissioner of revenue; Ron Lehr, executive director, Alaska Housing Finance Corporation; Dave Rose, executive director, Alaska Permanent Fund Corporation; the Federal Housing Administration; the U.S. Department of Housing and Urban Development; the Veterans Administration; the Federal National Mortgage Administration; the Government National Mortgage Association; the Federal Home Loan Mortgage Corporation; and to the Honorable Ted Stevens and the

Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.



Official Business

Alaska State Legislature

House

P.O. BOX V
State Capitol
Juneau, Alaska 99

BY THE JOINT COMMITTEE ON ECONOMIC RECOVERY

March 2, 1988

COMMITTEE RESOLUTION

Relating to the Residential Real Estate Market

WHEREAS the Alaska State Building Authority, (ASBA), has proposed a comprehensive plan to relocate the tenants, and then demolish Willow Park, a 150-unit, low-rent housing project; and

WHEREAS ASBA is seeking funding for this project from federal, state and local sources; and

WHEREAS the existing structures are 35 years old and in need of extensive renovation to remedy safety code violations, and renovation would cost more than the structures are worth; and

WHEREAS removing substandard units and replacing them with available public and privately owned housing units will help to stabilize the current housing market and help bring substantial new federal funds into a local Alaskan economy; and

WHEREAS relocation would provide an improved quality of life for the current residents of Willow Park; and

WHEREAS the complexes are functionally obsolete and a blight on the community; and

WHEREAS the Committee recognizes the value of the Willow Park demolition project and recognizes a responsibility for asbestos abatement of this state-owned facility; and

WHEREAS federal funding for relocation of the Willow Park tenants is directly related to garnering state or local funding of other costs, including asbestos abatement, demolition and site restoration.

BE IT RESOLVED that the Committee supports all efforts to obtain state, federal and local funds to complete this relocation and demolition project.

BE IT FURTHER RESOLVED that the Committee recommends that finding appropriate and sufficient state and local funding sources remain both a state legislative and municipal government priority, and that further analysis for consideration by the Legislature in upcoming appropriation actions be completed as soon as possible. The Committee further recommends that final

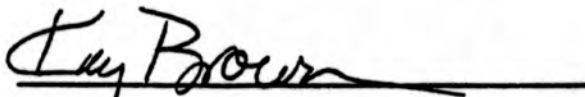
project costs exclusive of federal relocation assistance funds, once verified and funded, be spelled out in a memorandum of understanding between the state and local government by the Alaska State Building Authority subject to the conditions for appropriation the Legislature deems advisable.

Signed this 2nd day of March, 1988



Representative Max Gruenberg

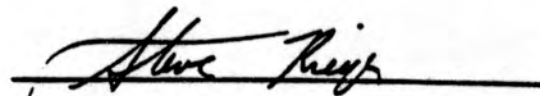
Chairman, House Joint Economic Recovery Committee



Representative Kay Brown

Co-Chairperson

Housing & Banking Subcommittee



Representative Steve Rieger

Co-Chairperson

Housing & Banking Subcommittee

Offered: 3/4/88
Referred: Judiciary and
Finance

5-1644B

Original sponsors: Donley, Ellis,
Boucher, et al.

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 432 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-
7 ration to accept trades in certain cases; and provid-
8 ing for an effective date."

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

10 * Section 1. PURPOSE AND AUTHORIZATION. (a) The legislature finds
11 that a sizeable proportion of the residents of the state have mortgages
12 that exceed both the present value of the property and the present ability
13 of the mortgagors of the property to make the payments agreed to in the
14 past. The purpose of this Act is to direct the Alaska Housing Finance
15 Corporation to use creative solutions to the present crisis in the housing
16 market and, at the same time, to permit the corporation to seek the dis-
17 posal of surplus residences within the corporation's inventory.

18 (b) The Alaska Housing Finance Corporation may permit mortgagors who
19 are experiencing difficulty in meeting their mortgage payments to return
20 the residence and its mortgage to the Alaska Housing Finance Corporation
21 and to enter into a new mortgage for different residential property subject
22 to the control of the corporation at rates that are more within the ability
23 of the mortgagors.

24 (c) The Alaska Housing Finance Corporation may also permit a mortga-
25 gor who is willing to accept the responsibility for a larger mortgage to
26 offer an existing residence and its mortgage to the corporation and enter
27 into a new mortgage for different residential property subject to the
28 control of the corporation.

29 (d) The Alaska Housing Finance Corporation, the mortgage insurers,

1 and the mortgagor shall, in each case, work together to reduce the negative
2 equity that may be present in individual cases.

3 (e) Subject to appropriations, the Alaska Housing Finance Corporation
4 may use up to 1 percent of its total fund equity to achieve the purposes of
5 this section.

6 (f) In this section, "residence" includes mobile homes.

7 * Sec. 2. This Act is repealed July 1, 1991.

8 * Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: CSHB 432(L&C)
PUBLISH DATE: HOUSE 3/4/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act authorizing AhFC to
accept trades in certain cases."
Sponsor: Labor and Commerce
Requestor: house Labor & Commerce

Agency Affected: Revenue
BkU: AhFC
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 86	FY 87	FY 90	FY 91	FY 92	FY 93
OPERATING						
PERSONAL SERVICES	-	-	-	-	-	-
TRAVEL	-	-	-	-	-	-
CONTRACTUAL	-	-	-	-	-	-
SUPPLIES	-	-	-	-	-	-
EQUIPMENT	-	-	-	-	-	-
LANDS & STRUCTURES	-	-	-	-	-	-
GRANTS, CLAIMS	-	-	-	-	-	-
MISCELLANEOUS	-	-	-	-	-	-
TOTAL OPERATING	-	-	-	-	-	-
CAPITAL	-	-	-	-	-	-
REVENUE	-	-	-	-	-	-

FUNDING: (Thousands of Dollars)

GENERAL FUND	-	-	-	-	-	-
FEDERAL FUNDS	-	-	-	-	-	-
OTHER	15,210	-	-	-	-	-
TOTAL	15,210	-	-	-	-	-

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

It is unclear at this time what the total volume of the program would be under this bill. The maximum amount would be 1% of \$1.521 billion or \$15,210,000.

Prepared By: Ron Lehr, Executive Director Phone: 276-5599
Division: Alaska Housing Finance Corporation Date: 03/03/88

Approved by Commissioner: Hugh Malone Date: 03/03/88
Agency: Department of Revenue

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

1 IN THE HOUSE

BY THE JOINT COMMITTEE ON ECONOMIC
RECOVERY (For the Subcommittee on
Housing and Banking)

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Department of Community and
7 Regional Affairs to modify the terms of its mortgage
8 loans; and providing for an effective date."

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

10 * Section 1. FINDINGS. The legislature finds that

11 (1) some residents of the state who have obtained mortgage loans
12 from the Department of Community and Regional Affairs have mortgages with
13 payment obligations that exceed their present ability to make the required
14 payments;

15 (2) the Department of Community and Regional Affairs does not
16 have statutory authority to reduce interest rates;

17 (3) the costs of foreclosure and resale, including legal ex-
18 penses, publication costs, maintenance costs, repair and renovation costs,
19 sales expenses, closing costs, and costs due to sale in a distressed mar-
20 ket, may be very substantial;

21 (4) it may be in the department's and state's best direct finan-
22 cial interest to avoid foreclosure by modifying loan terms including inter-
23 est rates, payment amounts, and maturity dates to induce existing owners to
24 remain in title to the property and maintain active management of the
25 property.

26 * Sec. 2. AS 44.47 is amended by adding a new section to read:

27 Sec. 44.47.525. MODIFICATION OF INTEREST RATES. (a) Notwith-
28 standing AS 44.47.410(a) and (b) and 44.47.520(b), the department may,
29 by loan modification, reduce interest rates on mortgages that it

1 financed under AS 44.47.360 - 44.47.560 if the department finds that

2 (1) a reduction in the interest rate would result in
3 likelihood that the loan would pay to maturity and induce the borrower
4 to remain in active management and ownership of the property; and

5 (2) a loan modification would be

6 (A) in the best financial interest of the department
7 and the state; and

8 (B) considered prudent by private lending standards
9 when compared to other costly alternatives such as foreclosure.

10 (b) The department may reduce the interest rate payable on
11 mortgage under (a) of this section only if the modification contains
12 an interest rate reopener clause. The interest rate reopener clause
13 must

14 (1) require that the borrower and the department renegotiate
15 the rate of interest on the mortgage within seven years of the
16 date of an interest rate reduction approved by the department under
17 this section;

18 (2) specify the date on which the borrower and the department
19 are to renegotiate the rate of interest under (1) of this subsection;
20

21 (3) incorporate a call feature reserving to the department
22 the right to demand repayment of the entire principal amount due if
23 the borrower and the department are unable to conclude renegotiation
24 of the rate of interest under (1) of this subsection; the department
25 may not use the call feature incorporated under this paragraph to
26 demand repayment of the entire principal amount due before the date
27 determined under (2) of this subsection.

28 (c) An interest rate reduction approved by the department under
29 this section cancels the borrower's obligation to pay the amount due

1 that is attributable to the difference between the original interest
2 rate and the interest rate reduction for the period of the rate re
3 duction.

4 (d) When an interest rate is renegotiated under (b) of this
5 section, the renegotiated rate may not exceed the interest rate origi
6 nally charged on the loan.

7 (e) The department shall adopt regulations prescribing the terms
8 and conditions of and the procedures applicable to loan modifications
9 made under this section.

10 * Sec. 3. This Act takes effect July 1, 1988.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

DRAFT
by Rieyer

1 IN THE HOUSE

BY THE JOINT COMMITTEE ON ECONOMIC
RECOVERY (For the Subcommittee on
Housing and Banking)

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notice requirements on the use of
7 a deed of trust; and providing for an effective
8 date."

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

10 * Section 1. AS 34.20 is amended by adding a new section to read:

11 Sec. 34.20.132. NOTICE OF OTHER REMEDIES. When a lender uses
12 note as evidence of an obligation secured by a deed of trust, the lender
13 must affirmatively advise the trustor and any other party bound by the
14 note, in writing within the note, of the security, recourse, and other
15 remedies, if any, available to the beneficiary. If it is intended to
16 permit the beneficiary to bring suit to collect an amount owing on the
17 obligation without foreclosing the deed of trust, this intent must be
18 stated in writing in the note. A beneficiary may not use a remedy not
19 specifically and clearly stated on a note executed after the effective
20 date of this Act. If a note executed after the effective date of this
21 Act fails to contain the notice required by this section, the debt
22 secured by the deed of trust may be foreclosed only under AS 34.20.
23 070 - 34.20.135, a deficiency judgment may not be entered, and no
24 other action may be taken nor judgment entered against the trustor,
25 surety, or guarantor on the obligation secured by the note.

26 * Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

27
28
Joint Liability in Partnerships.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

MEMORANDUM

February 29, 1988

SUBJECT: Authority to restructure mortgage loans
(Work order 5-2012)

TO: Representative Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel

You have asked for a review of the ability of the state agencies that manage residential mortgage lending programs to restructure those loans under current law.

The sources of the principal residential mortgage loan programs are:

-- loans made under one of the various housing assistance programs by the Alaska Housing Finance Corporation under authority of AS 18.56; 1/

-- loans made from the Housing Assistance Loan Fund and the Homeownership Assistance Funds by the Division of Housing Assistance of the Department of Community and Regional Affairs under the authority of AS 44.47.360 - 44.47.560. 2/

Though their total numbers are significantly below the numbers of loans made by each of the entities mentioned above, loans for residential purposes may also be made by

-- the Alaska Permanent Fund Corporation;

-- the commissioner of revenue, acting in the capacity of treasurer of the state's retirement systems for the pension fund surpluses of the Public Employment Retirement System and the Teachers' Retirement System.

"Restructuring of mortgage loans" is usually understood to mean at least one of the following:

-- forbearance arrangements or agreements, authorizing the borrower to reduce or suspend regular mortgage payments for a stated period; or,

- modification of the terms of a mortgage, including
 - reduction of payments of principal
 - without affecting the total debt obligation of the mortgagor on the mortgage loan; or
 - accompanied by a concomitant reduction in the total debt obligation of the mortgagor on the mortgage loan;
 - reduction of the interest payment payable on the loan; or
 - delay or postponement of the due date of the mortgage obligation.

Alaska Housing Finance Corporation mortgage loans:

The Alaska Housing Finance Corporation enjoys wide latitude as to how it may address delinquent loans and those that may become delinquent. In the enumeration of the general powers of the corporation, AS 18.56.090(11) provides that the corporation may, "for its . . . corporate purposes":

consent to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of the mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the corporation is a party;

While this statutory language sets no limits, there are some practical constraints.

AHFC principally finances its programs through the use of bond proceeds. AS 18.56.110 generally prescribes limitations applicable to the bonds and notes of the corporation. AS 18.56.110(f)(3) authorizes the corporation to "covenant as to the use and disposition of any and all payments of principal and interest received by the corporation on mortgage loans . . . or other investments held by the corporation." Under AS 18.56.120,

The pledge of assets or revenue of the corporation to the payment of the principal or interest on any obligations of the agency is valid and binding from the time the pledge is made and the assets or revenue are

immediately subject to the lien of the pledge without physical delivery or further act. . . .

So it is to the covenants that support the underlying bond issues rather than to provisions of state law that one must look to determine whether AHFC's various mortgage loan programs permit restructuring of outstanding loans. One must also consider the agreements between AHFC and, on the one hand, agreements entered into with the Federal National Mortgage Association (and similar entities) covering sales of mortgages and loans and, on the other hand, agreements with the corporation's own mortgage seller/servicers. Each of these groups of agreements may include provisions limiting the corporation's flexibility in responding to defaults and potential defaults by the borrowers.

These agreements notwithstanding, AHFC does authorize loan modifications under certain circumstances. The corporation's seller/servicer manual identifies those as limited to instances in which the mortgagor's income has been permanently affected by accident or illness, or in which the mortgagor's income has been reduced or eliminated altogether for a temporary period and which has not recovered sufficiently to maintain the current mortgage. The corporation will also consider a modification "if the servicer [of the mortgage] feels that changing the terms of the mortgage would not only cure [a] present delinquency but also prevent future delinquencies." AHFC must give prior approval and "will consider . . . reamortizing the debt to include the delinquent payments or extending the term of the loan by the number of past due installments." AHFC Seller/Servicer Manual sec. 9002.06.

In summary, current state law generally appears to provide sufficient latitude for the Alaska Housing Finance Corporation to modify loans and loan provisions for loans that are delinquent or may become delinquent. Legislative initiatives to amend the law to redefine or extend AHFC's authority need to be concerned with possible claims against impairment of contracts entered into by the corporation, particularly with bond underwriters, federal government agencies that purchase the mortgages, and the corporation's seller/servicers.

Department of Community and Regional Affairs mortgage loans:

Representative Steve Frank
Page 4
February 29, 1988

State law applicable to management of the department's mortgage loan programs does not specifically provide the department latitude to restructure repayment of principal and interest on its loans. The department's own regulations are also silent on the point.

The department has asserted to you that it may not reduce interest payable. Its assertion seems to be borne out by the following:

- the interest rate payable by a borrower under the rural owner-occupied housing program is, by statute (AS 44.47.410(b)), tied to the rate based on the most recent AHFC bond sale;

- the interest rate payable by a borrower under the rural non-owner-occupied housing program is set by statute (AS 44.47.520(b)) as an amount not to exceed $10\frac{1}{2}$ percent; the department advertises that the rate is $10\frac{1}{2}$ percent;

- the interest rate payable by a borrower under the homeownership assistance housing program, the interest-subsidy assistance program, directs by statute (AS 44.47.382(b)) that, for qualifying borrowers, the subsidy allowable shall be sufficient to reduce the actual interest rate paid on the mortgage to six percent.

The net effect of the three statutes cited suggests that the department is without discretion to adjust or reduce interest payable by a borrower under any of the three programs.

The department has also represented to you that, while it may adjust payments of principal on outstanding housing program loans, its authority to adjust the payments is limited to modifying current principal payments without reducing the mortgagor's total debt obligation under the mortgage loan. In other words, the department believes that it may reduce monthly payments, but the reductions correspondingly serve to extend the repayment obligation to an additional period; the department may not cancel or forgive a portion of the borrower's indebtedness.

The source of the department's mortgage lending activity is the housing assistance loan fund. That fund is established by statute (AS 44.47.380) and was, by a 1983 amendment, made

a revolving loan fund. 3/ A revolving loan fund is commonly thought of, and in Alaska legislation has been nearly universally treated, as a fund that is continually expended and replenished, from which withdrawals are made as loans but with a corresponding obligation to repay the fund in order to keep it intact. 4/ Legislative appropriations for state revolving loan funds are typically treated as non-lapsing appropriations, and any repayments of principal on loans purchased or originated with these appropriations should be deposited into the fund and made available from the fund for subsequent expenditure.

In my judgment, the department's representation to you seems to be fully consistent with its duty to maintain the integrity of the housing assistance loan fund as a revolving fund. A reduction in principal payments accompanied by a cancellation of a portion of a borrower's indebtedness would compromise the fund balance and the ability of the agency to use the fund balance as a source of loans in subsequent years.

Investments of the Alaska Permanent Fund Corporation:

Under authority granted in AS 37.13.120(g)(16), the corporation may invest in

notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings [subject to specific mortgage insurance requirements];

Like the Alaska Housing Finance Corporation, the Alaska Permanent Fund Corporation enjoys broad authority to manage investments. The corporation is authorized to "enter into and enforce all contracts necessary, convenient, or desirable for purposes of the corporation." (AS 37.13.120(f)). The residential mortgages purchased by the corporation as investments become assets of the corporation subject to the corporation's general asset management policies.

Since the Permanent Fund Corporation regularly receives income from sources other than those that support the mortgage lending activities of AHFC or the Housing Assistance Division, it is not constrained by the same considerations that circumscribe loan management practices of those two entities. Within the broad authority of the statutes directing its activities, the Permanent Fund

Representative Steve Frank
Page 6
February 29, 1988

Corporation appears to have ample legal authority to structure or restructure loans that are potentially or actually delinquent.

Retirement Funds investments:

The commissioner of revenue may invest the surpluses of the Public Employees' Retirement System and the Teachers' Retirement System in, among other permissible investments specified by law, residential mortgages. AS 39.35.-110(a)(10) (for the Public Employees' Retirement System) and AS 14.35.180(b)(10) (for the Teachers' Retirement System) authorize the commissioner to invest in "first lien real estate mortgages guaranteed by the federal Veterans Administration." AS 39.35.110(a)(11) and (12) and AS 14.35.-180(b)(11) and (12) authorize investments involving other kinds of residential mortgages, subject to specific limitations set out in those paragraphs and in AS 39.-35.110(e) and AS 14.25.180(e), respectively.

As to each of the two retirement programs, the commissioner is authorized by law to "do all acts whether or not expressly authorized which are considered necessary or proper for the protection of the investments held in the pension fund." AS 39.35.110(d); AS 14.25.180(d).

JBC:bb
wkb3/047

FOOTNOTES

1/ The loans of the Alaska Housing Finance Corporation may be classified among the following specific loan programs:

- home ownership assistance program (a program to provide mortgage subsidies to persons of low and moderate income);

- mobile home loan purchase program (a program to provide low-cost financing for mobile homes);

- pledged account mortgage program (a program to assist persons with sufficient assets but whose income does not meet the minimum monthly income requirements generally applicable to the corporation's loan programs);

- second mortgage loan program (a program to provide low-interest loans for home improvements or rehabilitation in order to make the units more habitable, and to finance second mortgages in order to allow home purchases);

- taxable mortgage program conventional loan (the principal AHFC homeowner assistance program, applicable to owner-occupied units);

- tri-plex and four-plex mortgage loan program (a program to allow the purchase of owner-occupied tri- and four-plex units);

- veterans' mortgage program (a program to provide additional assistance to qualifying veterans through a reduced interest rate);

2/ The Department of Community and Regional Affairs' loans involve the following specific programs:

- rural owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a housing unit, limited to single family units and duplexes, for use as the borrower's principal residence);

- rural non-owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a multiple unit housing project, generally two to eight units, though larger under extraordinary circumstances);

Representative Steve Frank
Page 8
February 29, 1988

-- home ownership assistance housing (a program to provide assistance to persons of lower and moderate income to purchase or construct single-family, owner-occupied dwellings, through the use of subsidized interest payment support).

3/ A January 23, 1984, Opinion of the Attorney General provides guidance to the Department of Community and Regional Affairs as to the proper handling of the repayments of principal and interest earnings on loans made from the loan fund before and after the 1983 amendment establishing it as a revolving fund.

4/ "Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) which was loaned to them from the fund so that new loans can be made on a continuing basis." 1982 Opinions of the Attorney General #13, November 30, 1982, at page 12.

JBC:bb
wkb3/047

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

RECEIVED FEB 1 1988

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

January 30, 1988

SUBJECT: Moratorium on judicial and nonjudicial
foreclosures (Work Order No. 5-1624)

TO: Senator Rick Halford

FROM: Richard A. Bradley
Legislative Counsel

Evan Reaney
Paul
Completed
1/31/88

I have prepared a bill for you that I believe is responsive to your request.

In my view, a bill simply declaring the moratorium that you requested would not work. And while we seek to draft all bills to withstand close judicial scrutiny, there are some in which that kind of review is inevitable--and this seems to be one.

While the legislature may direct executive agencies to forbear in the collection of amounts due or to accept "production credits" as payment, it seems clear to me that forbearance is not the answer when the state intrudes itself between two private parties; each of whom may be short on funding.

Since the receipt of your request, I have read a number of cases involving moratory legislation. I have found no case where the constitutional challenge to the legislation was sustained if the debt was simply suspended.

The most direct and on point constitutional provision is the "impairment of contracts" problem that I addressed briefly in my earlier memorandum. The provisions are found at art. I, sec. 10, cl. 1 of the U.S. Constitution and art. I, sec. 15 of the Alaska Constitution.

The solution that the court employed during the Great Depression was to state that while the impairment of contracts provision had to be noted, the states nonetheless

retained "their police power and the power to sustain their sovereignty and government, and their existence as states." Des Moines Joint Stock Land Bank v. Nordholm, 253 N.W. 701, 705 (Iowa 1934). Unless the police power was made inferior to the impairment of contracts provision (a problem in some states but not, it seems, in Alaska), the police power was sufficient to uphold the moratory Acts.

The impairment of contracts provision is not the only problem. The cases usually contain allegations that these Acts also deprive the mortgagee-lenders of vested property rights without due process of law and other more generalized arguments. While the property rights argument is not without force, easily the most critical problem is the impairment problem.

The courts address that by concluding that the moratory Acts do not impair the contract; rather, they affect the remedies. The distinction between substantive and procedural effects is not uncommon in these analyses or in the law generally.

But for that argument to work, there needs to be some consideration continuing to flow from the owner-mortgagor to the mortgagee-lender. The usual answer is that the mortgagor-owner remains liable for the taxes that are due on the property as well as for the maintenance of the property. In the usual case not involving commercial or farm property with an income, this usually means that the insurance contract must be maintained in effect.

And the debt itself must be addressed.

Different Acts and the cases construing them employ different concepts, but the common thread is the concept of "economic rent" (not always in those words): the cases recognize that while the terms of an existing mortgage may have been premised on different economic conditions, nevertheless the property has a present economic value to the owner-mortgagor and it is unjust to exclude payments to the mortgagee-lender. Thus, in Home Building and Loan Ass'n v. Blaisdell, 290 U.S. 398, the U.S. Supreme Court approved a law that required the mortgagor-owner to pay "the rental value of the premises as ascertained in judicial proceedings, and this amount is applied to the carrying of the property and to indebtedness on the property." As the Court noted, "The extension (of the period of redemption) is

made upon application to the court, on notice, for an order determining the reasonable rental value of the income on the property involved in the sale, or, if it has no income, then the reasonable rental value of the property, and directing the mortgagor to pay all or a reasonable part of such income or rental value, in or toward the payment of taxes, insurance, interest, mortgage indebtedness at such times and in such manner as shall be determined by the court. Prior to the expiration of the extended period of redemption, the court may revise or alter the terms of the extension as changed circumstances may require."

An Iowa law from that period dealt ambiguously with the obligation of the mortgagor-owner to make payments on the principal or interest due to the mortgagee-lender. Over a strong dissent, the majority of the Iowa Supreme Court construed the law as requiring payments to the lender.

It is said, however, that the Iowa statute does not provide for reasonable compensation to the mortgagee. When the Iowa act is fairly read and due significance is given to all of its provisions, it appears beyond peradventure of doubt that the act contemplates and provides for at least a reasonable rental of the mortgaged premises during the year of redemption. Des Moines Joint Stock Land Bank v. Nordholm, 253 N.W. 710 at 707 (Iowa, 1934).

Other cases are consistent. In Southold Savings Bank v. Fisher, 52 NYS2d 162, (N.Y. Supr. Ct., App. Term 1945), the court was concerned with a similar situation and a similar law: The New York moratory law required the owner of the mortgaged premises to "pay the unpaid principal amount at the rate of one percent per annum" until a specified date and then two percent per annum. The owner was in default of several installments of principal and thus the lender was permitted to sue to recover the entire debt.

[Moratorium statutes] prevented the mortgagees from maintaining an action for the principal only; but a default in the payment of interest and taxes was beyond the protection afforded by such moratorium statutes. The statutes thus effected a legal severance to the extent that if interest and taxes were paid, the principal need not be paid. 52 NYS at 166, quoting from Union Trust Co. of Rochester v. Kaplan, 292 NYS 152, (App. Div.).

Senator Halford
Page 4
January 30, 1988

While the court suggests a generalized condition that I do not believe is accurate (except, perhaps, within New York; that it was uniformly true that principal need not be paid under moratoriums), it is true that the cases seem uniformly to require the payment of taxes and insurance and then some economic rent or other concept that results in the payment of amounts due the mortgagee on the debt.

The bill enclosed requires the payment of the principal due under the mortgage.

I note that some moratory bills authorize the governor, by proclamation, to establish or limit the period during which the moratorium is in effect. That was not part of your request and is not included.

Because this legislation should be viewed as questionable apart from the economic emergency that justifies it, I believe that the bill should address the economic emergency. If you have any specifics that might bolster my rhetoric, I would welcome it.

If I may be of further assistance, please advise.

Enclosure

RAB:bb
wkb2/015

STATE OF ALASKA THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

MEMORANDUM

January 20, 1988

SUBJECT: Sale of property in foreclosure
(Work Order No. 5-1624)

TO: Senator Rick Halford

FROM: Richard A. Bradley
Legislative Counsel

RECEIVED JAN 20 1988

Theresa Maser has requested that we prepare a bill that would contain a one year prohibition on the sale of property that has gone into a non-judicial foreclosure, and a two-year prohibition on the sale of property that has gone into a judicial foreclosure. I would like to offer you a progress report on the drafting of the measure.

While I was certain that legislatures had enacted mortgage moratoriums before, I was also aware that they seemed facially to violate the constitutional prohibition on the impairment of contracts. Mortgages are, of course, simply contracts that involve the title to land. Art. I, sec. 10, cl. 1 of the U.S. Constitution provides that "No state shall . . . pass any . . . law impairing the obligation of contracts" Art. I, sec. 15 of the Alaska Constitution is to the same effect.

The answer appears to be that the legislature may enact such laws provided that there is an actual economic emergency, and that the measures contained within the moratorium are limited to those affected by the emergency. Other provisions are suggested in the legal literature and I expect to have such a bill for your consideration in the near future.

If you have any questions, please give me a call.

RAB:bb
WKB1/079

Patrick M. Rodey
Senator

Alaska State Legislature



Senate

1024 W. 6th Avenue, Suite 308
Anchorage, Alaska 99501
(907) 276-6731

During Session:
P.O. Box V
Juneau, Alaska 99811
(907) 465-3717

TO : Senator Arliss Sturgulewski

FROM: Senator Patrick M. Rodey

DATE: February 29, 1988

RE: Limitation on use of new exemption in bankruptcy proceedings

Attached is a copy of the drafted amendment I mentioned which would exempt interests and payments under certain retirement plans from seizure by creditors.

I would appreciate you reviewing this proposal and would welcome your suggestions and input.

Attachment

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

MEMORANDUM

February 29, 1988

SUBJECT: Limitation on use of new exemption
in bankruptcy proceedings

TO: Senator Pat Rodey

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This memo accompanies the amendment for SB 474 that you requested to exempt interests and payments under certain retirement plans from seizure by creditors. Please be aware, however, that with regard to bankruptcy proceedings the bill will not protect those plans where the individual establishes the individual's plan or where the individual can invade the corpus of the trust before retirement, disability or death. Legislation will not prevent this result because it is based on court interpretation of the bankruptcy law. Change in the federal law would be necessary to extend the protection to the presently unprotected plans. The court interpretation is based on the belief that a person should not be able to prevent creditors from reaching assets by establishing a retirement plan.

Please review proposed AS 09.38.017(c) of the bill to make sure it accomplishes what you want. The meaning of the corresponding section (sec. 33-1126 B.1.) in the Arizona bill was unclear, so I drafted what I thought it meant.

If I may be of further assistance, please advise.

Attachment

TLB:bb
WKB3:041

A M E N D M E N T

Offered in the SENATE

By Rodey

TO: SB 474

Page 1, following line 23:

Insert a new bill section to read:

"* Sec. 3. AS 09.38 is amended by adding a new section to read:

Sec. 09.38.017. EXEMPTION OF RETIREMENT PLAN INTERESTS AND PAYMENTS. (a) In addition to the exemption under AS 09.38.015(b), the following are exempt from a claim of an individual's creditor:

- (1) the interest of the individual in a retirement plan;
- and
- (2) the money or other assets payable to the individual from a retirement plan.

(b) The exemptions provided by (a) of this section do not apply to a contribution made by an individual to a retirement plan within 120 days before the individual files for bankruptcy.

(c) The exemptions provided by (a) of this section do not prevent the payment of benefits under a retirement plan to an alternate payee under a qualified domestic relations order. In this subsection, "qualified domestic relations order" has the meaning given in 26 U.S.C. 414(p).

(d) In this section,

- (1) "alternate payee" has the meaning given in 26 U.S.C. 414(p)(8);

(2) "individual" means an individual who is a participant in, a beneficiary of, or an alternate payee of a retirement plan;

(3) "retirement plan" means a retirement plan that is qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b), 26 U.S.C. 408, or 26 U.S.C. 409 (Internal Revenue Code)."

Renumber the following bill sections accordingly.

Page 2, line 18, after "section":

Insert "or in AS 09.38.017"

Page 3, following line 17:

Insert a new bill section to read:

"* Sec. 8. AS 09.38.030(e) is amended to read:

(e) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid or payable on the death of a insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service."

Renumber the following bill section accordingly.

Page 3, following line 27:

Insert new bill sections to read:

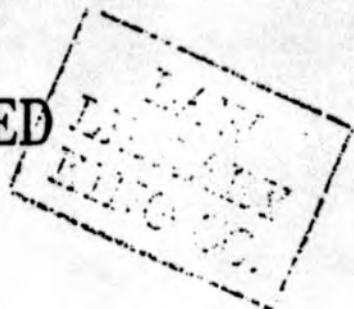
"* Sec. 10. AS 09.38.055 is amended to read:

Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under 11 U.S.C. (Bankruptcy) [THE BANKRUPTCY ACT (11 U.S.C.)] only the exemptions under AS 09.38.010, 09.38.015(a), 09.38.017, 09.38.020, 09.38.025 and 09.38.030 apply.

* Sec. 11. AS 09.38.017, as enacted by sec. 3 of this Act, does not apply to the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C. (Bankruptcy) before the effective date of this Act."

ARIZONA REVISED STATUTES

~~~~~  
ANNOTATED



1987

**Supplementary Pamphlet**  
*Covering Years 1975 to 1987*

*For Use In 1987-1988*

Replacing 1986 Pocket Part in back of volume

**Volume 11**  
**Titles 33 to 35**

Including Legislation Enacted Through The First  
Regular Session And The First Through Third  
Special Sessions Of The Thirty-Eighth  
Legislature (1987)

ST. PAUL, MINN.

WEST PUBLISHING CO.

# § 33-1125

## PROPERTY

6. One watch not in excess of a fair market value of one hundred dollars.
7. One typewriter, one bicycle, one sewing machine, a family bible, a lot in any burial ground, one shotgun or one rifle or one pistol, not in excess of an aggregate fair market value of five hundred dollars.
8. One motor vehicle not in excess of a fair market value of one thousand five hundred dollars. If the debtor is maimed or crippled, the fair market value of the motor vehicle shall not exceed four thousand dollars.
9. Professionally prescribed prostheses for the debtor or a dependent of the debtor, including a wheelchair.

Amended by Laws 1976, Ch. 170, § 22; Laws 1983, Ch. 237, § 10.

For effective date and application of Laws 1976, Ch. 170, see note following § 12-2401. Law Review Commentaries Arizona's new exemption statute. 19 Ariz.Bar J. No. 3, p. 32 (1983).

# § 33-1126. Money benefits or proceeds

A. The following property of a debtor shall be exempt from execution, attachment or sale on any process issued from any court:

1. All money received by or payable to a surviving spouse or child upon the life of a deceased spouse, parent or legal guardian, not exceeding twenty thousand dollars.

2. The earnings of the minor child of a debtor or the proceeds thereof by reason of any liability of such debtor not contracted for the special benefit of such minor child.

3. All money, proceeds or benefits of any kind to be paid in a lump sum or to be rendered on a periodic or installment basis to the insured or any beneficiary under any policy of health, accident or disability insurance or any similar plan or program of benefits in use by any employer, except for premiums payable on such policy or debt of the insured secured by a pledge, and except for collection of any debt or obligation for which the insured or beneficiary has been paid under the plan or policy and except for payment of amounts ordered for support of a person from proceeds and benefits furnished in lieu of earnings which would have been subject to such order and subject to any exemption applicable to earnings so replaced.

4. All money arising from any claim for the destruction of, or damage to, exempt property and all proceeds or benefits of any kind arising from fire or other insurance upon any property exempt under this article.

5. The cash surrender value of insurance policies where for a continued, unexpired period of one year such policies have been owned by a debtor and have named as beneficiary the debtor's surviving spouse, child, parent, brother, sister, or any dependent, to the extent of one thousand dollars for each surviving spouse, child, parent, brother, sister, or other dependent, not to exceed five thousand dollars in the aggregate. For this section a dependent is defined as one who is dependent upon the insured debtor for not less than one-half of his support.

6. Any claim for damages recoverable by any person by reason of any levy upon or sale under execution of his exempt personal property or by reason of the wrongful taking or detention of such property by any person, and the judgment recovered for such damages.

7. A total of one hundred fifty dollars held in a single account in any one financial institution as defined by § 6-101. The property declared exempt by this paragraph is not exempt from normal service charges assessed against the account by the financial institution at which the account is carried.

B. Any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement plan which is qualified under §§ 401(a), 403(a), 403(b), 408 or 409 of the United States Internal Revenue Code of 1986, as amended, shall be exempt from any and all claims of creditors of the beneficiary or participant. This section shall not apply:

## PROPERTY

1. To an alternate § 414(p) of the U

2. To amount bankruptcy; or

3. To the ass

The interest of a any creditor of t

C. Any person this state and wh may claim as a including securit residence, not ex rent.

Amended by Laws 12, 1986; Laws 19

1 Section 33-1101

For effective da 1976, Ch. 170, se

Reviser's Notes.

1983 Note. Pur 41-1304.02, in para stituted for "monthl fest clerical error.

1987 Note. 1 § 41-1304.02, sub: relettered as sub: graph 8, subdivisio bered as paragraph was relettered as :

Cross References

Garnishment, m accounts, withholdi § 12-1578.

## § 33-1130. Too professio

The following business or prof

1. The tools, primarily used in profession of the value of two tho do not include household purpo:

2. Farm mach not in excess of debtor whose pri

3. All arms, Added by Laws 19

For effective d 1976, Ch. 170, se

Law Review Com Arizona's new e: J. No. 3, p. 32 (19)



## PROPERTY

§ 33-1130

1. To an alternate payee under a qualified domestic relations order, as defined in § 414(p) of the United States Internal Revenue Code of 1986, as amended; or

2. To amounts contributed within one hundred twenty days before a debtor files for bankruptcy; or

3. To the assets of bankruptcy proceedings filed before July 1, 1987.

The interest of any and all alternate payees shall be exempt from any and all claims of any creditor of the alternate payee.

C. Any person the age of eighteen years or over, married or single, who resides within this state and who does not claim a homestead exemption under article 1 of this chapter<sup>1</sup> may claim as a personal property homestead exempt from all process prepaid rent, including security deposits as provided in § 33-1321, subsection A, for the claimant's residence, not exceeding the lesser of one thousand dollars or one and one-half months' rent.

Amended by Laws 1976, Ch. 170, § 23; Laws 1983, Ch. 237, § 11; Laws 1986, Ch. 4, § 28, eff. March 12, 1986; Laws 1987, Ch. 217, § 1.

<sup>1</sup>Section 33-1101 et seq.

For effective date and application of Laws 1976, Ch. 170, see note following § 12-2401.

### Reviser's Notes.

1983 Note. Pursuant to authority of section 41-1304.02, in paragraph 8, "months" was substituted for "month's" as a correction of a manifest clerical error.

1987 Note. Pursuant to authority of § 41-1304.02, subsection A, paragraph 8 was relettered as subsection B, subsection A, paragraph 8, subdivisions (a), (b) and (c) were renumbered as paragraphs 1, 2 and 3 and subsection B was relettered as subsection C.

### Cross References

Garnishment, monies in financial institution accounts, withholding from judgment debtor, see § 12-1578.

### Law Review Commentaries

Arizona's new exemption statute. 19 Ariz. Bar J. No. 3, p. 32 (1983).

Unconscionability as limitation on commercial sales arrangements. William E. Boyd, 18 Ariz. L. Rev. 48 (1976).

### Notes of Decisions

#### 1. In general

Proceeds from voluntary sale of real property declared as homestead were not exempt from garnishment even if vendor intended at time of sale to reinvest them in another homestead. *McLaws v. Kruger* (1981) 130 Ariz. 317, 636 P.2d 95.

## § 33-1130. Tools and equipment used in a commercial activity, trade, business or profession

The following tools and equipment of a debtor used in a commercial activity, trade, business or profession shall be exempt from process:

1. The tools, equipment, instruments and books of a debtor or the spouse of a debtor primarily used in, and necessary to carry on, the commercial activity, trade, business or profession of the debtor or the debtor's spouse, not in excess of an aggregate fair market value of two thousand five hundred dollars. For the purpose of this paragraph, "tools" do not include a motor vehicle primarily used by a debtor for personal, family or household purposes such as transportation to and from the debtor's place of employment.

2. Farm machinery, utensils, implements of husbandry, feed, seed, grain and animals not in excess of an aggregate value of two thousand five hundred dollars belonging to a debtor whose primary income is derived from farming.

3. All arms, uniforms and accoutrements required by law to be kept by a debtor.

Added by Laws 1976, Ch. 170, § 24. Amended by Laws 1983, Ch. 237, § 12.

For effective date and application of Laws 1976, Ch. 170, see note following § 12-2401.

### Law Review Commentaries

Arizona's new exemption statute. 19 Ariz. Bar J. No. 3, p. 32 (1983).

Unconscionability as limitation on commercial sales arrangements. William E. Boyd, 18 Ariz. L. Rev. 48 (1976).

# HOUSE AMENDMENT

TO: CSSB 392

BY: \_\_\_\_\_

Page 1 Line 21

*Add the following:*

- 5     \* Sec. 2. ECONOMIC STABILIZATION PROGRAM. (a) The economic stabi-
- 6 lization program is established in the Alaska Industrial Development and
- 7 Export Authority. Under this program the authority is authorized to use up
- 8 ~~to \$15,000,000~~ *money from AIGSA* for investments in debentures issued by a financial institu-
- 9 tion with
- 10           (1) a charter issued by the state;
- 11           (2) its principal office located in the state; and
- 12           (3) ~~assets that totaled on December 31, 1987, less than~~
- 13 ~~\$150,000,000 when combined with assets of all its affiliates.~~
- 14           (b) The Alaska Industrial Development and Export Authority may not
- 15 make an investment under this section until
- 16           (1) at least one public hearing has been held on the proposed
- 17 investment; and
- 18           (2) the authority and the director of banking, securities and
- 19 corporations make a written finding that the proposed investment is in the
- 20 public interest ~~and the finding is approved by the Governor.~~
- 21           (c) The Alaska Industrial Development and Export Authority may charge
- 22 a fee in connection with investments under this section that the authority
- 23 considers to be reasonable. The authority may only invest in debentures
- 24 that
- 25           (1) pay interest quarterly or more often;
- 26           (2) bear interest at a rate established by the authority that is
- 27 not less than one and one-half percent above the prime rate as determined
- 28 by the authority; in establishing interest the authority shall consider the
- 29 cost of ~~brokered~~ deposits;

Submit original amendment to the Chief Clerk.  
It will then be numbered and duplicated.

//     //

1 (3) are due for repayment 10 years after the date of issue, but  
2 may be repaid sooner at the discretion of the issuer;

3 (4) are secured by the full faith and credit of the issuing  
4 institution;

5 (5) create rights of payment superior to rights of stockholders  
6 of the financial institution, as determined by the authority;

7 (6) will be fully repaid before any dividends are paid to stock-  
8 holders; and

9 (7) comply with <sup>such</sup> other requirements <sup>as</sup> may be established by  
10 the authority ~~of the Director of the Division and the Governor~~.

11 (d) The amount of debentures that may be purchased by the Alaska  
12 Industrial Development and Export Authority under this section from an  
13 institution may not exceed the amount of that institution's capital, sur-  
14 plus, and undivided profits on December 31, 1985, as certified by the  
15 director of banking, securities and corporations. The combined amount that  
16 may be purchased from a holding company and its subsidiary bank may not  
17 exceed the amount of capital, surplus, and undivided profits of the sub-  
18 sidiary bank on December 31, 1985, as certified by the director of banking,  
19 securities and corporations.

20 (e) Notwithstanding AS 06.05.307(a), debentures purchased by the  
21 Alaska Industrial Development and Export Authority under this section may  
22 be issued without regard to the principal amount of the notes and deben-  
23 tures of the institution that are outstanding on the date of issuance. The  
24 authority may require the pledge of collateral to secure the debentures  
25 and, notwithstanding AS 06.05.307(c), bank assets may be pledged to secure  
26 debentures under this section. The authority may only purchase debentures  
27 under this section after the director of banking, securities and corpora-  
28 tions certifies that the issuance of the debentures otherwise complies with  
29 AS 06.05.307 and that the purchase meets the requirements of this section.

1 (f) The Alaska Industrial Development and Export Authority may pur-  
2 chase debentures under this section only from an institution that agrees to  
3 invest at least 15 percent of the purchase price in areas of the state  
4 outside of metropolitan areas within three years after receipt of the  
5 purchase price. The authority shall by regulation define "metropolitan  
6 areas" for purposes of this subsection.

7 \* Sec. 3. This Act is repealed July 1, 1990.

8 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).





# Alaska State Legislature

SENATE

*Office of the President*

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3755

March 11, 1988

MEMORANDUM

TO: Senator Arliss Sturgulewski, Co-Chairman  
Senate Joint Committee on Economic Recovery

FROM: Senator Jan Faiks  
President of the Senate

SUBJECT: Economic Recovery Legislation

Here is a summary of what I see as some of the potential benefits and costs of several of the items of economic recovery legislation under consideration. This initial draft is fairly broad, and if you would like to discuss it further please let me know.

**DRAFT**

SB 408 and 409

Establishing the bridge bank

- Pro: (1) Would do something to keep properties off the market and increase the value of other existing properties/decrease supply
- (2) Removes the problem from the political arena
- Con: (1) Cost of initial capitalization, SB 409 is one option which would do this through a \$15 million loan from the Railbelt Energy Fund
- (2) Additional State liability of a minimum of \$80 million through loans in portfolio
- (3) Government financing of private sector solution

---

SB 471

AIDEA Guaranteed Loan Program

- Pro: (1) Would give an incentive for the secondary market entities to purchase Alaskan loans - thus freeing up the banks to make more loans to Alaskans
- (2) Refinancing portion would assist businesses by extending the terms of their loans if it would save existing jobs
- Con: if these loans go into foreclosure it could cost the state money (however, the bill only provides for guaranteeing principal and not interest)

---

SB 474

Increasing property exemptions for individuals who go into bankruptcy

- Pro: Would assist individuals who go into bankruptcy
- Con: Could cost creditors money/redistributes wealth from creditors to debtors

HB 432

Authorizing AHFC to accept  
trades in certain cases

- Pro:
- (1) Would assist individual Alaskans trade for property more within their financial means
  - (2) Could create more long term stability
  - (3) Reduce AHFC loses through trade-ups
- Con:
- (1) AHFC can do this now, but the question is who comes up with the money to cover the negative equity

Senate Draft Version of AHFC trade bill:

- Pro:
- Would make the State assume the cost of the negative equity for up to 50 percent of the value of the mortgage
- Con:
- Could have significant financial costs to the State

---

HB 433 and Draft Senate Bill

Establishing a moratorium on  
judicial and nonjudicial  
foreclosures

- Pro:
- Would greatly assist individual homeowners
- Con:
- (1) Shuts down Outside money markets for short and long term
  - (2) Breaks contract laws and commitments
  - (3) Breaks property rights



Draft Senate Bill(s)

Temporarily reducing interest rates and monthly payments on AHFC loans

Pro: (1) Would provide significant relief to individual homeowners

(2) Releases disposable income into the economy

(3) Solves short term cash flow crisis

Con: Cost, \$80 million annually for AHFC's 52,000 home mortgages

Other Considerations:

(1) In reality this would merely increase the State's interest rate subsidy by 2 percent (from current 3 percent to 5 percent)

(2) AHFC's 9/30/87 financial statement says they only have \$73 million in unrestricted cash reserves (annual cost would be \$80 million). I seriously question this number, and believe they actually may have as much as \$1 billion which could be utilized.

(3) AHFC doesn't have the money to do this along with the other programs which have been established and proposed (hope program, trades, etc.)

(4) The Legislature needs to decide which programs are the top priorities, and if it will cost AHFC more than their current cash reserves then they will need more money to carry these out

Draft Senate Concurrent Resolutions:

- (1) Requesting AIDEA to establish a program to allow owners of existing properties to avoid foreclosure by selling the properties to AIDEA, retaining an option to repurchase the properties within 3 years, and leasing the property from the Authority during the 3 year period

Pro: Would assist commercial property owners in avoiding foreclosure and would save existing jobs among small businesses and their employees

Con: Could have significant costs for AIDEA

- (2) Requesting State agencies to remove substandard low income housing from the market, ship vacant mobile homes out of state, and convert existing vacant and unrentable units to University of Alaska student housing

Pro: (1) Excellent way to effect supply  
(2) Save money by purchasing at crisis prices

- (3) Requesting State agencies to establish a moratorium on loans for new construction in areas of existing oversupply

# STATE OF ALASKA THE LEGISLATURE

POUCH Y STATE CAPITOL  
JUNEAU, ALASKA 99811  
907 465 3800

## LEGISLATIVE AFFAIRS AGENCY

### MEMORANDUM

February 29, 1988

SUBJECT: Authority to restructure mortgage loans  
(Work order 5-2012)

TO: Representative Steve Frank  
ATTN: Rick Solie

FROM: Jack Chenoweth  
Legislative Counsel

You have asked for a review of the ability of the state agencies that manage residential mortgage lending programs to restructure those loans under current law.

The sources of the principal residential mortgage loan programs are:

-- loans made under one of the various housing assistance programs by the Alaska Housing Finance Corporation under authority of AS 18.56; 1/

-- loans made from the Housing Assistance Loan Fund and the Homeownership Assistance Funds by the Division of Housing Assistance of the Department of Community and Regional Affairs under the authority of AS 44.47.360 - 44.47.560. 2/

Though their total numbers are significantly below the numbers of loans made by each of the entities mentioned above, loans for residential purposes may also be made by

-- the Alaska Permanent Fund Corporation;

-- the commissioner of revenue, acting in the capacity of treasurer of the state's retirement systems for the pension fund surpluses of the Public Employment Retirement System and the Teachers' Retirement System.

"Restructuring of mortgage loans" is usually understood to mean at least one of the following:



-- forbearance arrangements or agreements, authorizing the borrower to reduce or suspend regular mortgage payments for a stated period; or,

- modification of the terms of a mortgage, including
  - reduction of payments of principal
    - without affecting the total debt obligation of the mortgagor on the mortgage loan; or
    - accompanied by a concomitant reduction in the total debt obligation of the mortgagor on the mortgage loan;
  - reduction of the interest payment payable on the loan; or
  - delay or postponement of the due date of the mortgage obligation.

Alaska Housing Finance Corporation mortgage loans:

The Alaska Housing Finance Corporation enjoys wide latitude as to how it may address delinquent loans and those that may become delinquent. In the enumeration of the general powers of the corporation, AS 18.56.090(11) provides that the corporation may, "for its . . . corporate purposes":

consent to the modification of the rate of interest, time of payment of any installment of principal or interest, or any other terms, of the mortgage loan, mortgage loan commitment, construction loan, temporary loan, contract or agreement of any kind to which the corporation is a party;

While this statutory language sets no limits, there are some practical constraints.

AHFC principally finances its programs through the use of bond proceeds. AS 18.56.110 generally prescribes limitations applicable to the bonds and notes of the corporation. AS 18.56.110(f)(3) authorizes the corporation to "covenant as to the use and disposition of any and all payments of principal and interest received by the corporation on mortgage loans . . . or other investments held by the corporation." Under AS 18.56.120,

The pledge of assets or revenue of the corporation to the payment of the principal or interest on any obligations of the agency is valid and binding from the time the pledge is made and the assets or revenue are

immediately subject to the lien of the pledge without physical delivery or further act. . . .

So it is to the covenants that support the underlying bond issues rather than to provisions of state law that one must look to determine whether AHFC's various mortgage loan programs permit restructuring of outstanding loans. One must also consider the agreements between AHFC and, on the one hand, agreements entered into with the Federal National Mortgage Association (and similar entities) covering sales of mortgages and loans and, on the other hand, agreements with the corporation's own mortgage seller/servicers. Each of these groups of agreements may include provisions limiting the corporation's flexibility in responding to defaults and potential defaults by the borrowers.

These agreements notwithstanding, AHFC does authorize loan modifications under certain circumstances. The corporation's seller/servicer manual identifies those as limited to instances in which the mortgagor's income has been permanently affected by accident or illness, or in which the mortgagor's income has been reduced or eliminated altogether for a temporary period and which has not recovered sufficiently to maintain the current mortgage. The corporation will also consider a modification "if the servicer [of the mortgage] feels that changing the terms of the mortgage would not only cure [a] present delinquency but also prevent future delinquencies." AHFC must give prior approval and "will consider . . . reamortizing the debt to include the delinquent payments or extending the term of the loan by the number of past due installments." AHFC Seller/Servicer Manual sec. 9002.06.

In summary, current state law generally appears to provide sufficient latitude for the Alaska Housing Finance Corporation to modify loans and loan provisions for loans that are delinquent or may become delinquent. Legislative initiatives to amend the law to redefine or extend AHFC's authority need to be concerned with possible claims against impairment of contracts entered into by the corporation, particularly with bond underwriters, federal government agencies that purchase the mortgages, and the corporation's seller/servicers.

Department of Community and Regional Affairs mortgage loans:



State law applicable to management of the department's mortgage loan programs does not specifically provide the department latitude to restructure repayment of principal and interest on its loans. The department's own regulations are also silent on the point.

The department has asserted to you that it may not reduce interest payable. Its assertion seems to be borne out by the following:

- the interest rate payable by a borrower under the rural owner-occupied housing program is, by statute (AS 44.47.410(b)), tied to the rate based on the most recent AHFC bond sale;

- the interest rate payable by a borrower under the rural non-owner-occupied housing program is set by statute (AS 44.47.520(b)) as an amount not to exceed 10½ percent; the department advertises that the rate is 10½ percent;

- the interest rate payable by a borrower under the homeownership assistance housing program, the interest-subsidy assistance program, directs by statute (AS 44.47.382(b)) that, for qualifying borrowers, the subsidy allowable shall be sufficient to reduce the actual interest rate paid on the mortgage to six percent.

The net effect of the three statutes cited suggests that the department is without discretion to adjust or reduce interest payable by a borrower under any of the three programs.

The department has also represented to you that, while it may adjust payments of principal on outstanding housing program loans, its authority to adjust the payments is limited to modifying current principal payments without reducing the mortgagor's total debt obligation under the mortgage loan. In other words, the department believes that it may reduce monthly payments, but the reductions correspondingly serve to extend the repayment obligation to an additional period; the department may not cancel or forgive a portion of the borrower's indebtedness.

The source of the department's mortgage lending activity is the housing assistance loan fund. That fund is established by statute (AS 44.47.380) and was, by a 1983 amendment, made



a revolving loan fund. 3/ A revolving loan fund is commonly thought of, and in Alaska legislation has been nearly universally treated, as a fund that is continually expended and replenished, from which withdrawals are made as loans but with a corresponding obligation to repay the fund in order to keep it intact. 4/ Legislative appropriations for state revolving loan funds are typically treated as non-lapsing appropriations, and any repayments of principal on loans purchased or originated with these appropriations should be deposited into the fund and made available from the fund for subsequent expenditure.

In my judgment, the department's representation to you seems to be fully consistent with its duty to maintain the integrity of the housing assistance loan fund as a revolving fund. A reduction in principal payments accompanied by a cancellation of a portion of a borrower's indebtedness would compromise the fund balance and the ability of the agency to use the fund balance as a source of loans in subsequent years.

Investments of the Alaska Permanent Fund Corporation:

Under authority granted in AS 37.13.120(g)(16), the corporation may invest in

notes secured by mortgages granting a first lien on commercial or residential real estate improved by completed buildings [subject to specific mortgage insurance requirements];

Like the Alaska Housing Finance Corporation, the Alaska Permanent Fund Corporation enjoys broad authority to manage investments. The corporation is authorized to "enter into and enforce all contracts necessary, convenient, or desirable for purposes of the corporation." (AS 37.13.120(f)). The residential mortgages purchased by the corporation as investments become assets of the corporation subject to the corporation's general asset management policies.

Since the Permanent Fund Corporation regularly receives income from sources other than those that support the mortgage lending activities of AHFC or the Housing Assistance Division, it is not constrained by the same considerations that circumscribe loan management practices of those two entities. Within the broad authority of the statutes directing its activities, the Permanent Fund

Representative Steve Frank  
Page 6  
February 29, 1988

Corporation appears to have ample legal authority to structure or restructure loans that are potentially or actually delinquent.

Retirement Funds investments:

The commissioner of revenue may invest the surpluses of the Public Employees' Retirement System and the Teachers' Retirement System in, among other permissible investments specified by law, residential mortgages. AS 39.35.-110(a)(10) (for the Public Employees' Retirement System) and AS 14.35.180(b)(10) (for the Teachers' Retirement System) authorize the commissioner to invest in "first lien real estate mortgages guaranteed by the federal Veterans Administration." AS 39.35.110(a)(11) and (12) and AS 14.35.-180(b)(11) and (12) authorize investments involving other kinds of residential mortgages, subject to specific limitations set out in those paragraphs and in AS 39.-35.110(e) and AS 14.25.180(e), respectively.

As to each of the two retirement programs, the commissioner is authorized by law to "do all acts whether or not expressly authorized which are considered necessary or proper for the protection of the investments held in the pension fund." AS 39.35.110(d); AS 14.25.180(d).

JBC:bb  
wkb3/047

#### FOOTNOTES

1/ The loans of the Alaska Housing Finance Corporation may be classified among the following specific loan programs:

- home ownership assistance program (a program to provide mortgage subsidies to persons of low and moderate income);

- mobile home loan purchase program (a program to provide low-cost financing for mobile homes);

- pledged account mortgage program (a program to assist persons with sufficient assets but whose income does not meet the minimum monthly income requirements generally applicable to the corporation's loan programs);

- second mortgage loan program (a program to provide low-interest loans for home improvements or rehabilitation in order to make the units more habitable, and to finance second mortgages in order to allow home purchases);

- taxable mortgage program conventional loan (the principal AHFC homeowner assistance program, applicable to owner-occupied units);

- tri-plex and four-plex mortgage loan program (a program to allow the purchase of owner-occupied tri- and four-plex units);

- veterans' mortgage program (a program to provide additional assistance to qualifying veterans through a reduced interest rate);

2/ The Department of Community and Regional Affairs' loans involve the following specific programs:

- rural owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a housing unit, limited to single family units and duplexes, for use as the borrower's principal residence);

- rural non-owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a multiple unit housing project, generally two to eight units, though larger under extraordinary circumstances);



-- home ownership assistance housing (a program to provide assistance to persons of lower and moderate income to purchase or construct single-family, owner-occupied dwellings, through the use of subsidized interest payment support).

3/ A January 23, 1984, Opinion of the Attorney General provides guidance to the Department of Community and Regional Affairs as to the proper handling of the repayments of principal and interest earnings on loans made from the loan fund before and after the 1983 amendment establishing it as a revolving fund.

4/ "Revolving loan funds provide for the return to the fund of repayments by borrowers of the principal (and frequently the interest on that principal) which was loaned to them from the fund so that new loans can be made on a continuing basis." 1982 Opinions of the Attorney General #13, November 30, 1982, at page 12.

JBC:bb  
wkb3/047

DRAFT  
by Rieger

1 IN THE HOUSE

BY THE JOINT COMMITTEE ON ECONOMIC  
RECOVERY (For the Subcommittee on  
Housing and Banking)

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notice requirements on the use of  
7 a deed of trust; and providing for an effective  
8 date."

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

10 \* Section 1. AS 34.20 is amended by adding a new section to read:

11 Sec. 34.20.132. NOTICE OF OTHER REMEDIES. When a lender uses a  
12 note as evidence of an obligation secured by a deed of trust, the note  
13 must affirmatively advise the trustor and any other party bound by the  
14 note, in writing within the note, of the security, recourse, and other  
15 remedies, if any, available to the beneficiary. If it is intended to  
16 permit the beneficiary to bring suit to collect an amount owing on the  
17 obligation without foreclosing the deed of trust, this intent must be  
18 stated in writing in the note. A beneficiary may not use a remedy not  
19 specifically and clearly stated on a note executed after the effective  
20 date of this Act. If a note executed after the effective date of this  
21 Act fails to contain the notice required by this section, the debt  
22 secured by the deed of trust may be foreclosed only under AS 34.20.-  
23 070 - 34.20.135, a deficiency judgment may not be entered, and no  
24 other action may be taken nor judgment entered against the trustor,  
25 surety, or guarantor on the obligation secured by the note.

26 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).

29 JOINT LIABILITY IN PARTNERSHIPS.

# STATE OF ALASKA

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

☐ 1031 W 4th AVENUE  
SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550

☐ 1st NATIONAL CENTER  
100 CUSHMAN ST.  
SUITE 400  
FAIRBANKS, ALASKA 99701-4679

☒ P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600

April 20, 1988

The Honorable John Binkley  
The Honorable Rick Halford  
Co-chairs, Senate Finance Committee  
P.O. Box V  
Juneau, AK 99811

Re: SSSB 408 (real property  
liquidating organizations)

Dear Senators Binkley and Halford:

We have recognized a minor legal problem with the preemption section of this bill, proposed AS 06.50.050 (page 5, line 11 - 15). This section proposes to grant extremely broad powers to the commissioner of commerce and economic development to "exempt real property liquidating organizations from any state law other than this chapter . . . ." Since the Alaska Supreme Court has shown some reluctance to uphold broad delegations of legislative power (see, for example, State v. Fairbanks Northstar Borough, 736 P.2d 1140 (Alaska 1987)), we would recommend that this section be replaced with a more limited delegation. I would propose the following amendment:

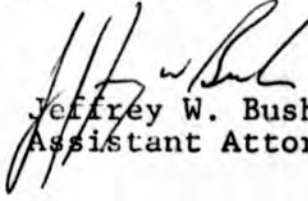
From line 14, after "organizations from any" delete the rest of that line and all of line 15 and insert "fees, authorization, permits, filings, or registrations of the department for conducting transactions authorized under this chapter."

Thank you for your consideration of this proposed amendment.

Sincerely yours,

GRACE BERG SCHAIBLE  
ATTORNEY GENERAL

By:

  
Jeffrey W. Bush  
Assistant Attorney General

JWB:nb

cc: Senator Tim Kelly  
Senator Arliss Sturgelewske  
J. Anthony Smith, Commissioner  
Department of Commerce and Economic Development





# Alaska State Legislature

SENATE

*Office of the President*

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3755

February 8, 1988

MEMORANDUM

TO: All Committee Members  
Senate Joint Committee on Economic Recovery

FROM: Senator Jan Faiks  
President of the Senate

SUBJECT: Draft Banking Legislation

Enclosed are copies of several items of draft legislation which I had drafted following the January 29th meeting of the committee, as well as brief summaries of the bills and resolutions.

I would like for the committee to consider introducing this legislation this week. If you have any suggestions after reviewing these materials, please let me know.

SENATE CONCURRENT RESOLUTION

Urging state agencies that make loans to withhold approval of loans for new construction in areas in which availability of business and commercial facilities and residences substantially exceeds demand.

Requests the Governor to direct appropriate agencies not to make loans for construction of new commercial, industrial, and residential units in communities where there is an oversupply unless demand cannot be met from existing facilities, or unless the local governing body requests a waiver of the moratorium by resolution.

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO.  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Urging state agencies that make loans to  
6 withhold approval of loans for new  
7 construction in areas in which availa-  
8 bility of business and commercial facil-  
9 ities and residences substantially  
10 exceeds demand.

11 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 WHEREAS many state agencies have been authorized by law to make loans  
13 to finance and provide the means to finance industrial, manufacturing, and  
14 business enterprises, and to expand the supply of adequate residential  
15 housing in the state; and

16 WHEREAS, in recent years, these loan programs have operated success-  
17 fully and have been the state's chief catalysts in financing and developing  
18 industrial, manufacturing, and business facilities, a significant source of  
19 employment opportunity for many Alaskans, and in marketing of a wide range  
20 of housing for state residents; and

21 WHEREAS plummeting oil prices and the erosion of business vitality  
22 during the past two years have required the state to adjust to changing  
23 times, to act to stabilize the state's economy, and to protect the sources  
24 of property value that are the principal means by which municipalities  
25 finance essential public services; and

26 WHEREAS there now exists in many Alaska communities an excess of  
27 business and commercial facilities and residences; and

28 WHEREAS the excess capacity of these improvements in some communities  
29 is so substantial as to warrant a moratorium on new construction in order



1 to sustain value in the existing supply of facilities and residences; and

2 WHEREAS state policy should preserve the value of the existing supply  
3 of facilities and residences in order to stabilize real property assessed  
4 valuations that support municipal ad valorem taxes; and

5 WHEREAS state loan programs that are the principal sources of finan-  
6 cial assistance for new construction should be restrained in order to  
7 stabilize the economy and protect the values of existing improvements;

8 BE IT RESOLVED that the Alaska State Legislature respectfully requests  
9 the Governor to direct the appropriate commissioners and directors of  
10 agencies and authorities that have authority to make loans to refrain from  
11 financing construction of new commercial, industrial, and residential  
12 facilities in communities having substantial excess capacity among these  
13 improvements unless demand for a proposed commercial, industrial, or resi-  
14 dential project cannot be satisfied from excess stock within the community  
15 or until the governing body of the municipality requests, by resolution, a  
16 waiver of the moratorium in order to expand the supply of these improve-  
17 ments.  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

SENATE CONCURRENT RESOLUTION

Relating to opportunities offered by the present crisis in residential housing.

This resolution requests that appropriate State agencies to; (1) remove substandard, low income housing from the market, and to convert other property to low income housing so there is no additional cost to the low income recipient, (2) ship vacant mobile homes out of Alaska, and (3) convert existing unrentable condominiums or similar units to University of Alaska student housing.

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Relating to opportunities offered by the  
6 present crisis in residential housing.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS the legislature finds that the state is undergoing a substan-  
9 tial financial crisis in the residential housing market; and

10 WHEREAS the financial crisis has resulted in financial institutions in  
11 the state becoming landlords of many residential housing units; and

12 WHEREAS it has been noted that to some extent the financial insti-  
13 tutions in the state have not yet developed a coherent policy that ad-  
14 dresses this crisis; and

15 WHEREAS it would exacerbate the crisis in the market for residential  
16 housing if the financial institutions in the state were to place these  
17 homes on the market; and

18 WHEREAS much of the vacant and unsalable housing on the market is  
19 substandard and should, if possible, be removed from the market;

20 BE IT RESOLVED by the Alaska State Legislature that the Governor is  
21 respectfully requested to direct the state agencies having responsibilities  
22 for the solutions to the financial crisis in the residential housing market  
23 to

24 (1) remove substandard low income housing from the market and,  
25 where possible, convert other residential property to low income housing at  
26 no additional cost to the residents of low income housing;

27 (2) ship vacant and unsalable mobile homes from the state; and

28 (3) convert vacant and unrentable condominiums or similar units  
29 to housing for students at the University of Alaska.



SENATE CONCURRENT RESOLUTION

Relating to the Alaska Industrial Development and Export Authority.

This resolution requests that AIDEA develop a new program to assist commercial property owners in avoiding foreclosure. The key elements of this program would include selling the commercial properties to AIDEA, with the seller retaining an option to repurchase within 3 years, and allowing the seller to lease the property from AIDEA during this 3 year period.

1 IN THE SENATE

2 SENATE CONCURRENT RESOLUTION NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 Relating to the Alaska Industrial Devel-  
6 opment and Export Authority.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8 WHEREAS Alaska is currently experiencing a severe economic downturn;  
9 and

10 WHEREAS some owners are experiencing difficulties in making loan  
11 payments on commercial properties and are facing the possibility of losing  
12 commercial properties through foreclosures; and

13 WHEREAS numerous foreclosures on commercial properties will adversely  
14 affect other segments of the Alaska economy;

15 BE IT RESOLVED that the Alaska State Legislature respectfully requests  
16 the Governor to request the Alaska Industrial Development and Export Au-  
17 thority to develop a program to enable owners of commercial properties to  
18 avoid foreclosure by

19 (1) selling the properties to the authority while retaining an  
20 option to repurchase the properties within three years; and

21 (2) leasing the properties from the authority during the three-  
22 year period.  
23  
24  
25  
26  
27  
28  
29

Frank & Rod  
Jud. Finance

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 SENATE BILL NO. 63

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to property exemptions for certain  
7 retirement plan interests and payments."

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

9 \* Section 1. AS 09.38 is amended by adding a new section to read:

10 Sec. 09.38.017. EXEMPTION OF RETIREMENT PLAN INTERESTS AND PAY-  
11 MENTS. (a) In addition to the exemption under AS 09.38.015(b), the  
12 following are exempt from a claim of an individual's creditor:13 (1) the interest of the individual in a retirement plan;  
14 and15 (2) the money or other assets payable to the individual  
16 from a retirement plan.17 (b) The exemptions provided by (a) of this section do not apply  
18 to a contribution made by an individual to a retirement plan within  
19 120 days before the individual files for bankruptcy.20 (c) The exemptions provided by (a) of this section do not pre-  
21 vent the payment of benefits under a retirement plan to an alternate  
22 payee under a qualified domestic relations order. In this subsection,  
23 "qualified domestic relations order" has the meaning given in 26  
24 U.S.C. 414(p).25 (d) A retirement plan exempt from claims under (a) of this  
26 section is conclusively presumed to be a spendthrift trust under this  
27 section.

28 (e) In this section,

29 (1) "alternate payee" has the meaning given in 26 U.S.C.



1 414(p)(8);

2 (2) "individual" means an individual who is a participant  
3 in, a beneficiary of, or an alternate payee of a retirement plan;

4 (3) "retirement plan" means a retirement plan that is  
5 qualified under 26 U.S.C. 401(a), 26 U.S.C. 403(a), 26 U.S.C. 403(b),  
6 26 U.S.C. 408, or 26 U.S.C. 409 (Internal Revenue Code).

7 \* Sec. 2. AS 09.38.025(a) is amended to read:

8 (a) Except as provided in this section or AS 09.38.017, an  
9 individual is entitled to exemption of unmatured life insurance and  
10 annuity contracts owned by the individual. If the contracts have  
11 accrued dividends and loan values available to the individual ag-  
12 gregating more than \$5,000, a creditor may obtain a court order re-  
13 quiring the individual debtor to pay the creditor, and authorizing the  
14 creditor on the debtor's behalf to obtain payment of, the amount of  
15 the accrued dividends and loan values in excess of \$5,000 or the  
16 amount of the creditor's claim, whichever is less.

17 \* Sec. 3. AS 09.38.030(e) is amended to read:

18 (e) The following property, unless exempt without limitation  
19 under AS 09.38.015 or 09.38.017, upon receipt by and while it is in  
20 the possession of the individual, shall be treated as earnings, in-  
21 come, cash, or other liquid assets under this section:

22 (1) benefits paid by reason of disability, illness, or  
23 unemployment;

24 (2) money or property received for alimony or separate  
25 maintenance;

26 (3) proceeds of insurance, a judgment, or a settlement, or  
27 other rights accruing as a result of bodily injury of the individual  
28 or of the wrongful death or bodily injury of another individual of  
29 whom the individual was or is a dependent;

1 (4) proceeds or benefits paid or payable on the death of an  
2 insured, if the individual was the spouse or a dependent of the in-  
3 sured; and

4 (5) amounts paid under a stock bonus, pension, profit-  
5 sharing, annuity, or similar plan or contract, providing benefits by  
6 reason of age, illness, disability, or length of service.

7 \* Sec. 4. AS 09.38.055 is amended to read:

8 Sec. 09.38.055. BANKRUPTCY PROCEEDINGS. In a proceeding under  
9 11 U.S.C. (Bankruptcy) [THE BANKRUPTCY ACT (11 U.S.C.)] only the  
10 exemptions under AS 09.38.010, 09.38.015(a), 09.38.017, 09.38.020,  
11 09.38.025 and 09.38.030 apply.

12 \* Sec. 5. AS 09.38.017, added by sec. 1 of this Act, does not apply to  
13 the assets of a bankruptcy estate in a proceeding filed under 11 U.S.C.  
14 (Bankruptcy) before the effective date of this Act.  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



Official Business

# Alaska State Legislature

P.O. BOX V  
State Capitol  
Juneau, Alaska 99811

## SENATE JOINT COMMITTEE ON ECONOMIC RECOVERY Agenda items for Meeting of March 28, 1988

*ENDORSED -  
OK*

1. HJR 72 - "Relating to the residential real estate market."

*HOLD*

2. CSHB 432(L&C) - "An Act authorizing the Alaska Housing Finance Corporation to accept trades in certain cases; and providing for an effective date."

*HOLD*

3. HB 549 - "An Act relating to notice requirements on the use of a deed of trust; and providing for an effective date."

*ENDORSED  
OK*

4. HB 550 - "An Act authorizing the Department of Community and Regional Affairs to modify the terms of its mortgage loans; and providing for an effective date."

*Passed and endorsed  
OK SB - Josephson  
add disclosure as presented in  
HB 549.*



BY THE RULES COMMITTEE BY  
REQUEST OF THE HOUSE MEMBERS  
OF THE JOINT COMMITTEE ON  
ECONOMIC RECOVERY

1 IN THE HOUSE

2

HOUSE JOINT RESOLUTION NO. 72

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

Relating to the residential real estate

6

market.

7 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

8

WHEREAS some areas of the state are experiencing a severe economic  
9 crisis as evidenced by bankruptcies, foreclosures, business failures, and  
10 the loss of homes and property values; and

11

WHEREAS the state is experiencing a difficult economic period, espe-  
12 cially in the residential real estate market, and many persons are finding  
13 it difficult to meet their financial obligations during these times; and

14

WHEREAS keeping people in their homes and facilitating the purchase  
15 and sale of homes serves an important public purpose and is financially  
16 beneficial to both the borrower and the lender; and

17

WHEREAS borrowers are anxious to continue to meet their financial  
18 obligations, but there is a significant number of individuals who are under  
19 severe risk of being unable to do so; and

20

WHEREAS many borrowers would be able to meet their financial obliga-  
21 tions if various forms of debt restructuring were made possible; and

22

WHEREAS debt restructuring requires the cooperation of the various  
23 parties to each real estate loan, including the borrower, the loan origina-  
24 tor, the Alaska Housing Finance Corporation or other loan packager, the  
25 secondary purchasers of the loans, and the various loan insurers; and

26

WHEREAS the state's economy would be greatly helped if the financial  
27 institutions of the state would adjust their lending and collection pol-  
28 icies to the present needs and abilities of their customers by using more  
29 flexible approaches to stabilize and improve the economy of the state; and

1 WHEREAS present financing packages available to residential real  
2 estate borrowers do not provide adequate market liquidity or ability to  
3 buy, sell, or trade properties in today's economic circumstances in which  
4 debt balances on the properties are nearly equal to or greater than the  
5 values of the property; and

6 WHEREAS, in order for residents of the state to meet their financial  
7 obligations, the parties to residential loans in the state must be willing  
8 to negotiate more creative financing terms and conditions for the benefit  
9 of all concerned; and

10 WHEREAS to some extent state agencies and the financial institutions  
11 in the state have not yet developed a coherent policy that addresses the  
12 current economic crises; and

13 WHEREAS the likelihood of loss or default is lessened if a market is  
14 made more liquid, something that will benefit all participants in real  
15 estate loans; and

16 WHEREAS the ability to buy, sell, and trade properties in a market  
17 that has very high loan-to-value ratios can only be accomplished through  
18 innovation and cooperation of the various parties to a real estate loan;  
19 and

20 WHEREAS the Alaska Housing Finance Corporation is presently working  
21 with the legislature, lending institutions, federal governmental agencies,  
22 and private mortgage insurers to find creative ways of refinancing existing  
23 mortgages and managing recent acquisitions in the residential real estate  
24 market;

25 BE IT RESOLVED by the Alaska State Legislature that the various finan-  
26 cial participants in the Alaska real estate market, including the Alaska  
27 Housing Finance Corporation, the Department of Commerce and Economic Devel-  
28 opment, the Department of Community and Regional Affairs, the Department of  
29 Revenue, the Alaska Permanent Fund Corporation, and the various loan

1   servicers, guarantors, and insurers are urged to cooperate in developing  
2   innovative ways to restructure debt and to buy, sell, and trade properties  
3   for their collective benefit; and be it

4       FURTHER RESOLVED that economic stabilization of the residential real  
5   estate market be accomplished with the joint cooperation of the Alaska  
6   Housing Finance Corporation, the Department of Commerce and Economic Devel-  
7   opment, the Department of Community and Regional Affairs, the Department of  
8   Revenue, and the Alaska Permanent Fund Corporation and other agencies of  
9   the state and of lending institutions in the state as well as the Federal  
10   Housing Administration, the U.S. Department of Housing and Urban Develop-  
11   ment, the Veterans Administration, the Federal National Mortgage Asso-  
12   ciation, the Government National Mortgage Association, the Federal Home  
13   Loan Mortgage Corporation, and private mortgage insurers; and be it

14       FURTHER RESOLVED that the legislature fully supports efforts on the  
15   part of the Alaska Housing Finance Corporation, the Department of Commerce  
16   and Economic Development, the Department of Community and Regional Affairs,  
17   the Department of Revenue, and the Alaska Permanent Fund Corporation to  
18   hold foreclosed-upon residential properties off the market in instances  
19   where such action makes long-term economic sense.

20       COPIES of this resolution shall be sent to the Honorable Steve Cowper,  
21   Governor; the Honorable J. Anthony Smith, commissioner of commerce and  
22   economic development; the Honorable David Hoffman, commissioner of com-  
23   munity and regional affairs; the Honorable Hugh Malone, commissioner of  
24   revenue; Ron Lehr, executive director, Alaska Housing Finance Corporation;  
25   Dave Rose, executive director, Alaska Permanent Fund Corporation; the  
26   Federal Housing Administration; the U.S. Department of Housing and Urban  
27   Development; the Veterans Administration; the Federal National Mortgage  
28   Administration; the Government National Mortgage Association; the Federal  
29   Home Loan Mortgage Corporation; and to the Honorable Ted Stevens and the



- 1 Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S.
- 2 Representative, members of the Alaska delegation in Congress.

Offered: 3/4/88  
Referred: Judiciary and  
Finance

5-1644B

Original sponsors: Donley, Ellis,  
Boucher, et al.

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 432 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-

7

ration to accept trades in certain cases; and provid-

8

ing for an effective date."

9

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

10

\* Section 1. PURPOSE AND AUTHORIZATION. (a) The legislature finds

11

that a sizeable proportion of the residents of the state have mortgages

12

that exceed both the present value of the property and the present ability

13

of the mortgagors of the property to make the payments agreed to in the

14

past. The purpose of this Act is to direct the Alaska Housing Finance

15

Corporation to use creative solutions to the present crisis in the housing

16

market and, at the same time, to permit the corporation to seek the dis-

17

posal of surplus residences within the corporation's inventory.

18

(b) The Alaska Housing Finance Corporation may permit mortgagors who

19

are experiencing difficulty in meeting their mortgage payments to return

20

the residence and its mortgage to the Alaska Housing Finance Corporation

21

and to enter into a new mortgage for different residential property subject

22

to the control of the corporation at rates that are more within the ability

23

of the mortgagors.

24

(c) The Alaska Housing Finance Corporation may also permit a mortga-

25

gor who is willing to accept the responsibility for a larger mortgage to

26

offer an existing residence and its mortgage to the corporation and enter

27

into a new mortgage for different residential property subject to the

28

control of the corporation.

29

(d) The Alaska Housing Finance Corporation, the mortgage insurers,

1 and the mortgagor shall, in each case, work together to reduce the negative  
2 equity that may be present in individual cases.

3 (e) Subject to appropriations, the Alaska Housing Finance Corporation  
4 may use up to 1 percent of its total fund equity to achieve the purposes of  
5 this section.

6 (f) In this section, "residence" includes mobile homes.

7 \* Sec. 2. This Act is repealed July 1, 1991.

8 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



H L+C  
JUD

5-2066A  
Bradley  
3/14/88  
\* 3/29/88

\* By the Rules Committee at  
the request of  
BY THE JOINT COMMITTEE ON ECONOMIC  
RECOVERY (For the Subcommittee on  
Housing and Banking)

1 IN THE HOUSE

2 HOUSE BILL NO. 549

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notice requirements on the use of  
7 a deed of trust; and providing for an effective  
8 date."

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

10 \* Section 1. AS 34.20 is amended by adding a new section to read:

11 Sec. 34.20.132. NOTICE OF OTHER REMEDIES. When a lender uses a  
12 note as evidence of an obligation secured by a deed of trust, the note  
13 must affirmatively advise the trustor and any other party bound by the  
14 note, in writing within the note, of the security, recourse, and other  
15 remedies, if any, available to the beneficiary. If it is intended to  
16 permit the beneficiary to bring suit to collect an amount owing on the  
17 obligation without foreclosing the deed of trust, this intent must be  
18 stated in writing in the note. A beneficiary may not use a remedy not  
19 specifically and clearly stated on a note executed after the effective  
20 date of this Act. If a note executed after the effective date of this  
21 Act fails to contain the notice required by this section, the debt  
22 secured by the deed of trust may be foreclosed only under AS 34.20.-  
23 070 - 34.20.135, a deficiency judgment may not be entered, and no  
24 other action may be taken nor judgment entered against the trustor,  
25 surety, or guarantor on the obligation secured by the note.

26 \* Sec. 2. This Act takes effect immediately under AS 01.10.070(c).  
27  
28  
29

H.C. & RA  
L+C  
FIN

5-2052X  
Chenoweth

3/23/88  
\* 3/24/88

\* By the Rules Committee at  
the request of  
BY THE JOINT COMMITTEE ON ECONOMIC  
RECOVERY (For the Subcommittee on  
Housing and Banking)

1 IN THE HOUSE

2 HOUSE BILL NO. 550

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Department of Community and  
7 Regional Affairs to modify the terms of its mortgage  
8 loans; and providing for an effective date."

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

10 \* Section 1. FINDINGS. The legislature finds that

11 (1) some residents of the state who have obtained mortgage loans  
12 from the Department of Community and Regional Affairs have mortgages with  
13 payment obligations that exceed their present ability to make the required  
14 payments;

15 (2) the Department of Community and Regional Affairs does not  
16 have statutory authority to reduce interest rates;

17 (3) the costs of foreclosure and resale, including legal ex-  
18 penses, publication costs, maintenance costs, repair and renovation costs,  
19 sales expenses, closing costs, and costs due to sale in a distressed mar-  
20 ket, may be very substantial;

21 (4) it may be in the department's and state's best direct finan-  
22 cial interest to avoid foreclosure by modifying loan terms including  
23 rescheduling principal payments, reducing interest rates and payment  
24 amounts, and adjusting maturity dates to induce existing owners to remain  
25 in title to the property and maintain active management of the property.

26 \* Sec. 2. AS 44.47 is amended by adding a new section to read:

27 Sec. 44.47.525. MODIFICATION OF LOANS. (a) Notwithstanding  
28 AS 44.47.410(a) and (b) and 44.47.520(b), on mortgages that it has  
29 financed under AS 44.47.360 - 44.47.560 the department may, by loan

1 modification, reschedule principal payments or reduce interest rates,  
2 or both, if the department finds that

3 (1) a loan modification would result in the likelihood that  
4 the loan would pay to maturity and induce the borrower to remain in  
5 active management and ownership of the property; and

6 (2) the loan modification would be

7 (A) in the best financial interest of the department  
8 and the state; and

9 (B) considered prudent by private lending standards  
10 taking into account the financial circumstances of the borrower  
11 and other costly alternatives such as foreclosure.

12 (b) Rescheduling of the borrower's repayment of principal under  
13 (a) of this section provides an interim payment adjustment and is not  
14 intended to affect the obligation of the borrower to repay the princi-  
15 pal amount on the mortgage loan.

16 (c) The department may reduce the interest rate payable on a  
17 mortgage under (a) of this section only if the modification contains  
18 an interest rate reopener clause. The interest rate reopener clause  
19 must

20 (1) require that, if the interest rate is reduced, the  
21 borrower and the department shall renegotiate the rate of interest on  
22 the mortgage within five years of the date of an interest rate reduc-  
23 tion approved by the department under this section;

24 (2) specify the date by which the borrower and the depart-  
25 ment are to renegotiate the rate of interest under (1) of this sub-  
26 section;

27 (3) incorporate a call feature reserving to the department  
28 the right to demand repayment of the entire principal amount due if  
29 the borrower and the department are unable to conclude renegotiation



1 of the rate of interest under (1) of this subsection; the department  
2 may not use the call feature incorporated under this paragraph to  
3 demand repayment of the entire principal amount due before the date  
4 determined under (2) of this subsection.

5 (d) An interest rate reduction approved by the department under  
6 this section cancels the borrower's obligation to pay the amount due  
7 that is attributable to the difference between the original interest  
8 rate and the interest rate reduction for the period of the rate re-  
9 duction.

10 (e) When an interest rate is renegotiated under (c) of this  
11 section, the renegotiated rate may not exceed the interest rate orig-  
12 inally charged on the loan.

13 (f) The department shall adopt regulations prescribing the terms  
14 and conditions of and the procedures applicable to loan modifications  
15 made under this section.

16 \* Sec. 3. This Act takes effect July 1, 1988.  
17  
18  
19  
20  
21  
22  
23  
24  
25

# ALASKA STATE SENATE

JOE P. JOSEPHSON  
DISTRICT H ANCHORAGE  
3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7611



WHILE IN JUNEAU  
P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-4525

April 8, 1988

The Honorable Jalmar Kerttula  
Chair  
Senate Judiciary Committee  
Alaska State Senate  
P.O. Box V  
Juneau, Alaska 99801

Dear Senator Kerttula:

I am enclosing for your consideration a draft bill entitled "an Act relating to judicial and nonjudicial foreclosures".

The Senate Committee on Economic Recovery adopted the concepts contained in the draft and has recommended that the bill be referred to your Judiciary Committee for introduction, and, in addition, that a Judiciary Committee bill, if introduced, should incorporate the concepts contained in HB 549, entitled "an Act relating to notice requirements on the use of a deed of trust".

The enclosure is an effort to reverse recent decisions of the Supreme Court of Alaska regarding creditor's rights in foreclosure situations. As a member of the Judiciary Committee and as a member of the Committee on Economic Recovery, I would recommend that legislation be sponsored through the Judiciary Committee for consideration of the Senate.

Please let me know if you desire additional information or background.

With best wishes, I am

Sincerely,

A handwritten signature in cursive script, appearing to read "Joe P. Josephson".

Joe P. Josephson  
State Senator

JPJ:rak  
Enclosure

cc: Senator Arliss Sturgulewski  
Senator Lloyd Jones

5-2103A /  
Bradley  
3/28/88

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to judicial and nonjudicial foreclo-  
7 sures."

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

9 \* Section 1. AS 09.45.170 is amended to read:

10 Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN. A person  
11 having a lien upon real property, other than that of a judgment or a  
12 deed of trust, whether created by mortgage or otherwise, to secure a  
13 debt or other obligation may bring an action to foreclose the lien.  
14 In the action, the court may direct the sale of the encumbered prop-  
15 erty or a portion of it and the application of the proceeds of the  
16 sale to the payment of costs, expenses of sale, and the amount due the  
17 plaintiff. The judgment shall also determine the personal liability  
18 of a defendant for the payment of the debt secured by the lien and be  
19 entered accordingly.

20 \* Sec. 2. AS 09.45.170 is amended by adding a new subsection to read:

21 (b) A deed of trust may be foreclosed only under AS 34.20.070 -  
22 34.20.135.

23 \* Sec. 3. AS 34.20.070(a) is amended to read:

24 (a) If a deed of trust is executed conveying real property  
25 located in the state to a trustee as security for the payment of an  
26 indebtedness and the deed provides that in case of default or noncom-  
27 pliance with the terms of the trust, the trustee may sell the property  
28 for condition broken, the trustee, in addition to the right of fore-  
29 closure and sale, may execute the trust by sale of the property, upon



1 the conditions and in the manner set forth in the deed of trust,  
2 without first securing a decree of foreclosure and order of sale from  
3 the court, if the trustee has complied with the notice requirements of  
4 (b) of this section. If the trust is executed by a suit on the note  
5 and foreclosure and sale by the court, the foreclosure and sale extin-  
6 guishes the deed of trust.

7 \* Sec. 4. AS 34.20.100 is amended to read:

8 Sec. 34.20.100. DEFICIENCY JUDGMENT PROHIBITED. When a sale  
9 authorized under AS 34.20.070 - 34.20.135 is made by a trustee under a  
10 deed of trust, [AS AUTHORIZED BY AS 34.20.070 - 34.20.130,] no other  
11 or further action or proceeding may be taken nor judgment entered  
12 against the maker or the surety or guarantor of the maker [,] on the  
13 obligation secured by the deed of trust for a deficiency.

14 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

Request  
for  
5-2103A  
to Rules

1 IN THE SENATE

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to judicial and nonjudicial foreclo-  
7 sures."

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

9 \* Section 1. AS 09.45.170 is amended to read:

10 Sec. 09.45.170. JUDGMENT ON FORECLOSURE OF LIEN. A person  
11 having a lien upon real property, other than that of a judgment or a  
12 deed of trust, whether created by mortgage or otherwise, to secure a  
13 debt or other obligation may bring an action to foreclose the lien.  
14 In the action, the court may direct the sale of the encumbered prop-  
15 erty or a portion of it and the application of the proceeds of the  
16 sale to the payment of costs, expenses of sale, and the amount due the  
17 plaintiff. The judgment shall also determine the personal liability  
18 of a defendant for the payment of the debt secured by the lien and be  
19 entered accordingly.

20 \* Sec. 2. AS 09.45.170 is amended by adding a new subsection to read:

21 (b) A deed of trust may be foreclosed only under AS 34.20.070 -  
22 34.20.135.

23 \* Sec. 3. AS 34.20.070(a) is amended to read:

24 (a) If a deed of trust is executed conveying real property  
25 located in the state to a trustee as security for the payment of an  
26 indebtedness and the deed provides that in case of default or noncom-  
27 pliance with the terms of the trust, the trustee may sell the property  
28 for condition broken, the trustee, in addition to the right of fore-  
29 closure and sale, may execute the trust by sale of the property, upon

1 the conditions and in the manner set forth in the deed of trust,  
2 without first securing a decree of foreclosure and order of sale from  
3 the court, if the trustee has complied with the notice requirements of  
4 (b) of this section. If the trust is executed by a suit on the note  
5 and foreclosure and sale by the court, the foreclosure and sale extin-  
6 guishes the deed of trust.

7 \* Sec. 4. AS 34.20.100 is amended to read:

8 Sec. 34.20.100. DEFICIENCY JUDGMENT PROHIBITED. When a sale  
9 authorized under AS 34.20.070 - 34.20.135 is made by a trustee under a  
10 deed of trust, [AS AUTHORIZED BY AS 34.20.070 - 34.20.130,] no other  
11 or further action or proceeding may be taken nor judgment entered  
12 against the maker or the surety or guarantor of the maker [,] on the  
13 obligation secured by the deed of trust for a deficiency.

14 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



\_\_\_\_ BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act authorizing the establishment of real property liquidating organizations and providing for active state supervision thereof; and providing for an effective date.

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

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that

(1) there have been several failures of state and federally chartered financial institutions and one bank consolidation by the Federal Deposit Insurance Corporation under 12 U.S.C. § 1823(c) in Alaska;

(2) state and federal agencies currently hold large portfolios of distressed real estate loans and real property;

(3) these financial institutions and government agencies need to be permitted to cooperate in administering these properties to avoid further adverse impacts on Alaska's real estate markets and to stabilize the state's banking system; and

(4) the maintenance of stable and orderly markets for the purchase and sale of Alaska's commercial and residential real estate is essential to the economy of the state and the welfare of its citizens.

\* Sec. 2. IMMUNITY FROM STATE AND FEDERAL ANTITRUST LAWS. The state intends to ensure the stability of the state's real estate markets and prevent a precipitous decline in real estate prices by, among other things, displacing competition with government regulation in matters relating to the sale and disposition of Alaska real property held by financial institutions and state and federal agencies as a result of foreclosure actions.

1 By authorizing the creation of real property liquidating organizations and  
2 mandating active state supervision of these organizations, the state  
3 contemplates that all persons and entities who subscribe or grant assets  
4 to, contribute funds or services to, obtain a beneficial interest in, or  
5 participate in the management of, the real property liquidating  
6 organizations will be immunized to the fullest extent possible against  
7 potential liability under federal antitrust laws and state antitrust,  
8 competition and trade practices laws arising from the operation of such  
9 organizations.

10 \* Sec. 3. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. (a) The com-  
13 missioner shall administer this chapter.

14 (b) The commissioner shall adopt regulations to carry out the  
15 purposes of organizations established under this chapter.

16 Sec. 06.50.020. FORMATION. (a) Three or more grantors as  
17 defined in AS 06.50.900 may agree to create an organization to carry  
18 out the purposes of this chapter.

19 (b) The establishment of a real property liquidating  
20 organization shall be commenced by filing the organizational documents  
21 with the commissioner. The commissioner will review the documents to  
22 verify conformity with this section and consistency with the purposes  
23 of this chapter. No conveyance of assets to, or disposition of real  
24 property or other assets by, an organization shall be effective until  
25 the organizational documents have been reviewed and approved by the  
26 commissioner under this section.

27 (c) The organizational documents must recite the purpose of the  
28 organization; identify all grantors who have subscribed to the  
29 organization, and all persons who otherwise possess an interest in the



1 organization; describe the manner in which the organization will be  
2 managed; and prescribe the method pursuant to which distributions to  
3 the grantors and other beneficiaries will be made.

4 (d) The organizational documents shall provide for

5 (1) the conveyance to the organization of all or part of  
6 the grantors' portfolios of commercial and residential Alaskan real  
7 properties or other assets;

8 (2) the orderly disposition of property of the organization  
9 at prices to be determined by the organization, subject to review and  
10 approval by the commissioner under this chapter;

11 (3) the expenditure of assets to manage organization  
12 property, including expenditures to preserve or enhance the value of  
13 properties, as necessary; and

14 (4) the establishment of such other terms and conditions  
15 relating to the sale or other disposition of assets that the grantors  
16 deem necessary or appropriate to ensure that the organization will be  
17 operated in a manner that will provide for orderly disposition of  
18 property and promote a stable real estate market and economy.

19 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to any  
20 recordkeeping requirements specified in regulations adopted by the  
21 commissioner or in the organizational documents, the organization  
22 shall retain a certified public accountant to annually prepare and  
23 submit to the department on or before April 1 of each calendar year an  
24 audited balance sheet, income statement, statement of principal,  
25 statement of changes in financial position, and schedule of all dispo-  
26 sitions of real estate assets made by the organization during the  
27 year. In connection with the preparation of such financial documents,  
28 the accountant shall issue letters

29 (1) certifying that all sales of real estate assets and all



1 distributions during the relevant year were made in accordance with  
2 the provisions of the organizational documents and this chapter, or  
3 identifying any variance; and

4 (2) with respect to the internal financial controls and  
5 practices of the organization, setting forth such recommendations as  
6 the accountant may consider appropriate.

7 (b) The organization shall prepare and file with the  
8 commissioner, on a quarterly basis, a report containing the following;

9 (1) a schedule of all real property held by the  
10 organization;

11 (2) the sale price and all other significant terms of sale  
12 for property sold since the date of the previous report; and

13 (3) a proposed operating plan for the next quarterly period  
14 in conformity with regulations adopted by the commissioner.

15 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The  
16 commissioner shall review each report filed under AS 06.50.040(b) and  
17 approve or disapprove the proposed quarterly operating plan within 20  
18 days after filing. In reviewing the operating plan, the commissioner  
19 shall consider current market conditions. Before approving the plan,  
20 the commissioner must find that the plan comports with the purpose of  
21 this chapter.

22 (b) All business records maintained by the organization shall be  
23 available for review and examination by the department at the  
24 organization's principal place of business during regular business  
25 hours, on at least five days advance notice. The commissioner shall  
26 conduct examinations on a regular basis, but in no event less than  
27 twice per calendar year.

28 (c) Should the commissioner disapprove the proposed quarterly  
29 operating plan submitted under AS 06.50.040(b) or conclude, after

1 examination, that the organization is being administered contrary to  
2 statute or regulation, the commissioner shall notify the organization  
3 and all grantors in writing, specifying all deficiencies and  
4 prescribing appropriate remedies. If the organization fails to remedy  
5 deficiencies in accordance with the commissioner's prescriptions  
6 within 60 days following receipt of the notice, the commissioner may  
7 commence proceedings to dissolve the organization in accordance with  
8 the procedures in AS 06.01.030.

9 (d) The expenses of the department reasonable incurred in  
10 reviewing and approving a plan or conducting an examination under this  
11 section shall be charged to and paid by the organization in accordance  
12 with AS 06.01.010.

13 Sec. 06.50.050. PRE-EMPTION. Organizations regulated under this  
14 chapter that are formed and act solely to carry out the purposes of  
15 this chapter are exempt from regulation by any other state agency or  
16 under any other state laws. No political subdivision of the state may  
17 require an organization regulated under this chapter to obtain an  
18 authorization, permit or registration of any kind for conducting  
19 transactions authorized under this chapter.

20 Sec. 06.50.900. DEFINITIONS. In this chapter,

21 (1) "grantor" means a federally or state chartered  
22 financial institution, federal or state agency, licensed insurer, or  
23 financing company that conveys assets to, and thereby obtains a  
24 beneficial interest in and the right to participate in the management  
25 of, a real property liquidating organization.

26 (2) "organization" means a corporation, partnership, trust,  
27 fund, or other legal entity formed under and consistent with the  
28 purposes of this chapter; and

29 (3) "real property liquidating organization" means an



1 entity created to acquire, maintain, manage, market, sell or otherwise  
2 dispose of real property and to distribute to the trust's  
3 beneficiaries, in accordance with the provisions of the trust  
4 instruments, the proceeds derived from the sale or disposition of the  
5 property.

6 \* Sec. 4. AS 18.56 is amended by adding a new section to read:

7 Sec. AS 18.56.210. MARKET STABILIZATION POWERS. (a) The corpo-  
8 ration may take appropriate action to stabilize the market price of  
9 and demand for residential housing in the state.

10 (b) To accomplish the purposes of this section, the corporation  
11 may

12 (1) enter into agreements with state and federally char-  
13 tered financial institutions, state or federal agencies, insurers and  
14 financing companies for the cooperative management and disposal of  
15 real property owned by the corporation, financial institutions,  
16 agencies or other contracting parties; and

17 (2) convey real property and other assets to, and acquire a  
18 beneficial interest in, a real property liquidating organization  
19 established under AS 06.50.

20 \* Sec. 5. AS 44.88.080 is amended by adding a new paragraph to read:

21 (25) to convey real property and other assets to, and  
22 acquire a beneficial interest in, a real property liquidating  
23 organization established under AS 06.50.

24 \* Sec. 6. This act takes effect immediately in accordance with  
25 AS 01.10.070.



*Bob  
Finn  
drop Fed  
w/ Scott Hawkins*

IN THE \_\_\_\_\_

BY THE \_\_\_\_\_

\_\_\_\_\_ BILL NO. \_\_\_\_\_

IN THE LEGISLATURE OF THE STATE OF ALASKA

FIFTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to agreements with the Anchorage Economic Development Corporation or its nonprofit subsidiary to secure the purchase of assets from the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation; and providing for an effective date."

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

\*Section 1.(a) The legislature finds, determines and declares that

(1) the failure of certain Alaska banks and savings and loan associations has resulted in the transfer of a substantial number of real estate loans and foreclosed real estate to the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation;

B80009

(2) the liquidation of these assets would cause an immediate and severe negative impact on real estate values in Alaska increasing the over supply of property on the market and depressing values for all property owners in the major areas of the state;

(3) it is in the public interest to insure that the assets acquired from failed Alaska banks and savings and loan associations be managed in such a manner as to minimize negative impacts on property values and to provide for the continuation without foreclosure of those loans where a demonstrable ability to repay exists;

(4) the Anchorage Economic Development Corporation is an appropriate entity to acquire and manage the assets consistent with the policy established by the legislature. In this Act "corporation" shall mean the Anchorage Economic Development Corporation and any nonprofit subsidiary with powers to acquire and manage the assets on a statewide basis.

(b) it is declared to be the policy of the state, in the interest of promoting the health, security and general welfare of all the people of the state, and a public purpose to stabilize real estate values and promote the survival of business, to authorize the state to enter into agreements with the corporation to assist the corporation in financing the acquisition of assets located in the state from the Federal Deposit Insurance Corporation and the

Federal Savings and Loan Insurance Corporation. Payments by the state pursuant to such agreements are not a debt or liability of the state and shall be subject to annual appropriation by the legislature, but such are hereby declared to be a moral obligation of the state.

\*Section 2. The commissioner of commerce and economic development is authorized to enter into agreements with the corporation for the contingent purchase by the state from the corporation of real property and loans acquired by the corporation from the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation. Pursuant to the agreements the state shall be obligated to purchase such assets, if the assets do not produce sufficient revenue to satisfy such terms and conditions, at a price sufficient to insure that the corporation will meet its obligations to bondholders under the terms and conditions of any bond indenture or other contract entered into by the corporation to secure the bonds. All funds necessary to meet the obligations of the state pursuant to such agreements shall be subject to annual appropriation by the legislature.

\*Section 3. The agreements entered into by the commissioner may include a provision for a reserve fund to secure the bonds of the corporation. In order to assure the maintenance of the required debt service reserve in the reserve



fund, the legislature may appropriate annually to the corporation for deposit in the fund the sum, certified by the corporation to the governor and to the legislature, that is necessary to restore the fund to an amount equal to the required debt service reserve. The corporation annually, before January 30, shall make and deliver to the governor and to the legislature a certificate stating the sum required to restore the fund to that amount, and the sum so certified may be appropriated and paid to the corporation during the then current state fiscal year. The corporation shall determine the amount of the required debt service reserve. Nothing in this subsection creates a debt or liability of the state.

\*Section 4. Agreements entered into by the commissioner and the corporation may include policies and standards relating to the adjustment of purchased loans and the sale or liquidation of real estate and other collateral owned by the corporation.

\*Section 5. The agreements entered into by the commissioner and the corporation shall provide that the corporation shall distribute surplus revenues, if any, after payment of expenses and debt service to public or nonprofit economic development organizations in the areas in which the assets are located and that corporation appoint as directors of its nonprofit subsidiary persons who represent affected areas of the state.

\*Section 6. This Act shall be known as the Alaska Economic Stabilization and Development Act of 1988.

\*Section 7. The authority authorized by this Act to enter into agreements with the corporation shall terminate on July 1, 1989 provided that the commissioner may enter into amendments or extensions of agreements entered into prior to July 1, 1989.

\*Section 8. This Act takes effect immediately in accordance with AS 01.10.070 (c).

ERIC BALANCES NET OF PARTICIPATIONS  
: OUTBACKS FROM ASSUMING BANK

| ALASKA NATIONAL BANK OF THE NORTH |            |                     | FIRST INTERSTATE BANK OF ALASKA |                     | COMBINED TOTAL |                     |
|-----------------------------------|------------|---------------------|---------------------------------|---------------------|----------------|---------------------|
| LOAN TYPE                         | AMOUNT     | NUMBER<br>OF ASSETS | AMOUNT                          | NUMBER<br>OF ASSETS | AMOUNT         | NUMBER<br>OF ASSETS |
| Real Estate                       |            |                     |                                 |                     |                |                     |
| a. Construction                   | 12,859,000 |                     | 27,550,733                      |                     | 40,409,733     |                     |
| b. Farmland                       | 0          |                     | 0                               |                     | 0              |                     |
| c. 1-4 Family Res                 | 9,066,000  |                     | 2,471,271                       |                     | 11,537,271     |                     |
| d. Multi Family 5+                | 0          |                     | 4,127,813                       |                     | 4,127,813      |                     |
| e. Non-farm/Non-res               | 136,000    |                     | 11,678,859                      |                     | 12,014,859     |                     |
| Total R/E Loans                   | 22,061,000 | 211                 | 45,828,676                      | 128                 | 68,087,676     | 339                 |
| Installment                       | 610,000    | 110                 | 492,264                         | 30                  | 1,102,264      | 140                 |
| Commercial                        | 30,562,001 | 411                 | 42,334,600                      | 214                 | 72,896,601     | 625                 |
| ORE                               | 3,867,534  | 47                  | 22,209,221                      | 106                 | 28,076,756     | 153                 |
| SUBTOTAL                          | 59,300,535 | 779                 | 110,864,761                     | 478                 | 170,165,296    | 1,257               |
| Chargeoffs                        | 19,898,558 | 1,244               | 17,593,706                      | 272                 | 36,632,264     | 1,516               |
| * TOTAL                           | 78,399,093 | 2,023               | 128,458,467                     | 750                 | 206,857,560    | 2,773               |

~ 47 assets, 137 properties

88 106 assets, 465 properties

also room and there  
that NAA is resuming  
may come back



FIDIC BALANCES NET OF PARTICIPATIONS  
 & PUTBACKS FROM ASSURING BANK

| ALASKA NATIONAL BANK OF THE NORTH |           |                     | FIRST INTERSTATE BANK OF ALASKA |                     |            | COMBINED TOTAL      |  |
|-----------------------------------|-----------|---------------------|---------------------------------|---------------------|------------|---------------------|--|
| LOAN TYPE                         | AMOUNT    | NUMBER<br>OF ASSETS | AMOUNT                          | NUMBER<br>OF ASSETS | AMOUNT     | NUMBER<br>OF ASSETS |  |
| * INCLUDES:                       |           |                     |                                 |                     |            |                     |  |
| A. SEA LOANS                      |           |                     |                                 |                     |            |                     |  |
| Sold qty portion                  | 2,672,559 | 10                  |                                 |                     | 2,672,559  | 10                  |  |
| FDIC portion                      | 584,068   |                     |                                 |                     | 584,068    | 0                   |  |
| FDIC wholly owned                 | 2,535,344 | 11                  | 5,728,100                       | 27                  | 8,263,444  | 38                  |  |
| Total SEA's                       | 5,791,991 | 21                  | 5,728,100                       | 27                  | 11,520,091 | 48                  |  |
| B. R/E PARTICIPATIONS             |           |                     |                                 |                     |            |                     |  |
| Participant portion               | 5,828,640 | 58                  | 13,018,975                      | 44                  | 18,847,615 | 102                 |  |
| FDIC portion                      | 968,595   |                     | 2,716,931                       | 21                  | 3,685,526  | 21                  |  |
| Total R/E part                    | 6,797,235 | 58                  | 15,735,907                      | 65                  | 22,534,142 | 123                 |  |
| C. COMMERCIAL PARTICIPATIONS      |           |                     |                                 |                     |            |                     |  |
| Participant portion               | 773,770   | 3                   | 723,754                         | 5                   | 1,497,524  | 8                   |  |
| FDIC portion                      |           |                     | 973,529                         |                     | 973,529    |                     |  |
| Total Commercial part             | 773,770   | 3                   | 1,697,283                       | 5                   | 2,471,053  | 8                   |  |
| E. BANK PREMISES                  |           |                     |                                 |                     |            |                     |  |
|                                   | 2,791,133 |                     | 19,629,604                      |                     | 22,420,737 |                     |  |



# Alaska State Legislature

## SENATE

### *Office of the President*

P.O. Box V  
State Capitol  
Juneau, Alaska 99811  
(907) 465-3755

#### ECONOMIC RECOVERY LEGISLATION

##### Legislation Already Introduced:

|        |                                                                                      |
|--------|--------------------------------------------------------------------------------------|
| SB 333 | Priority wage claims in bank liquidations                                            |
| SB 392 | Repeal of AIDEA's 2 percent delinquency rule                                         |
| SB 408 | Establishing the Alaska stabilization assistance fund within AIDEA                   |
| SB 409 | Making a special appropriation to the Alaska stabilization assistance fund           |
| SB 471 | Establishing an AIDEA program to guarantee loans and refinance debt                  |
| SB 474 | Increasing property exemptions for individuals who go into bankruptcy                |
| SCR 32 | Urging financial institutions to adopt more flexible lending and collection policies |
| HB 432 | Authorizing AHFC to accept trades in certain cases                                   |
| HB 433 | Establishing a moratorium on judicial and nonjudicial foreclosures                   |

##### Legislation Under Consideration for Introduction:

|     |                                                                                                                                                                                |
|-----|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SB  | Temporarily reducing interest rates and monthly payments on AHFC loans                                                                                                         |
| SB  | Establishing a moratorium on judicial and nonjudicial foreclosures                                                                                                             |
| SCR | Requesting state agencies to establish a moratorium on loans for new construction in areas of existing oversupply                                                              |
| SCR | Requesting AIDEA to develop a program to enable owners of commercial properties to avoid foreclosure                                                                           |
| SCR | Requesting state agencies to remove substandard low income housing from the market, ship vacant mobile homes out of state, and convert existing vacant and unrentable units to |

5-1863B ✓  
Cook  
3/16/88

15,000.00 as  
1/24/88

Presented by  
Hallowood  
3/6/88

VAR 1 5 1988

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 408 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska stabilization assis-  
7 tance program; and providing for an effective date."

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

9 \* Section 1. ALASKA STABILIZATION ASSISTANCE PROGRAM. (a) The purpose  
10 of the Alaska stabilization assistance program is to promote the stabi-  
11 lization of real property values in the state.

12 (b) The Alaska stabilization assistance fund is established in the  
13 Alaska Industrial Development and Export Authority. The authority may use  
14 money appropriated to the fund to make loans or investments to carry out  
15 the purposes of this section. An appropriation to the Alaska stabilization  
16 assistance fund lapses to the fund from which it was appropriated July 1,  
17 1998, unless specified otherwise in the appropriation act. Other receipts  
18 shall be separately accounted for and deposited into the general fund.  
19 Each year the authority shall notify the legislature of the amount of these  
20 receipts and the legislature may appropriate that amount into the \_\_\_\_.

21 (c) To encourage institutional lenders, state or federal agencies,  
22 and other institutions not to attempt to dispose of real property in the  
23 state until the real estate market becomes more stable, the authority may

24 (1) enter into contracts to provide for the management of real  
25 property in the state that has been or could be foreclosed upon or other-  
26 wise acquired through actions taken on defaulted loans;

27 (2) acquire interests in [corporations that have interests in]

28 (A) part-performing or nonperforming loans secured by real  
29 property in the state; or



1 (B) loans acquired by an institution or federal or state  
2 agency as a result of a bank failure in the state.

3 (d) Contracts entered into by the authority under (c)(1) of this  
4 section may provide for the management of property only through June 30,  
5 1998.

6 \* Sec. 2. This Act is repealed July 1, 1998.

7 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

5-1864L  
Cook  
3/16/88

Original sponsors: Kelly and Sturgulewski

MAR 16 1988

Funding Information

General Fund \$

Other Funds \$

B

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 409 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Alaska  
7 stabilization assistance fund; and providing for an  
8 effective date."

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

10 \* Section 1. The sum of \$45,000,000 is appropriated from the \_\_\_\_\_  
11 \_\_\_\_\_ to the Alaska stabilization assistance fund.

12 \* Sec. 2. The appropriation made by sec. 1 of this Act lapses into the  
13 \_\_\_\_\_ on July 1, 1998.

14 \* Sec. 3. This Act takes effect on the effective date of a version of  
15 an Act enacted by the Fifteenth Alaska State Legislature establishing the  
16 Alaska stabilization assistance fund.

5-1863B ✓  
Cook  
3/16/88

VAR. 1 6 1988

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 408 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska stabilization assis-  
7 tance program; and providing for an effective date."

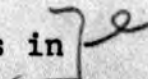
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. ALASKA STABILIZATION ASSISTANCE PROGRAM. (a) The purpose  
10 of the Alaska stabilization assistance program is to promote the stabi-  
11 lization of real property values in the state.

12 (b) The Alaska stabilization assistance fund is established in the  
13 Alaska Industrial Development and Export Authority. The authority may use  
14 money appropriated to the fund to make loans or investments to carry out  
15 the purposes of this section. An appropriation to the Alaska stabilization  
16 assistance fund lapses to the fund from which it was appropriated July 1,  
17 1998, unless specified otherwise in the appropriation act. Other receipts  
18 shall be separately accounted for and deposited into the general fund.  
19 Each year the authority shall notify the legislature of the amount of these  
20 receipts and the legislature may appropriate that amount into the \_\_\_\_.

21 (c) To encourage institutional lenders, state or federal agencies,  
22 and other institutions not to attempt to dispose of real property in the  
23 state until the real estate market becomes more stable, the authority may

24 (1) enter into contracts to provide for the management of real  
25 property in the state that has been or could be foreclosed upon or other-  
26 wise acquired through actions taken on defaulted loans;

27 (2) acquire interests in corporations that have interests in 

28 (A) part-performing or nonperforming loans secured by real  
29 property in the state; or



1 (B) loans acquired by an institution or federal or state  
2 agency as a result of a bank failure in the state.

3 (d) Contracts entered into by the authority under (c)(1) of this  
4 section may provide for the management of property only through June 30,  
5 1998.

6 \* Sec. 2. This Act is repealed July 1, 1998.

7 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

5-1864L  
Cook  
3/16/88

Original sponsors: Kelly and Sturgulewski

MAR 16 1988

Funding Information

General Fund \$

Other Funds \$

B

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 409 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making a special appropriation to the Alaska  
7 stabilization assistance fund; and providing for an  
8 effective date."

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

10 \* Section 1. The sum of \$45,000,000 is appropriated from the \_\_\_\_\_

11 \_\_\_\_\_ to the Alaska stabilization assistance fund.

12 \* Sec. 2. The appropriation made by sec. 1 of this Act lapses into the

13 \_\_\_\_\_ on July 1, 1998.

14 \* Sec. 3. This Act takes effect on the effective date of a version of  
15 an Act enacted by the Fifteenth Alaska State Legislature establishing the  
16 Alaska stabilization assistance fund.

*Unanimous*

BY HALFORD, FAIKS, UEHLING,  
JOSEPHSON, STURGULEWSKI AND  
ABOOD

1 IN THE SENATE

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 471

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a program in the Alaska Indus-  
7 trial Development and Export Authority to guarantee  
8 business loans and to refinance debt; and providing  
9 for an effective date."

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

11 \* Section 1. AS 44.88 is amended by adding new sections to read:

12 ARTICLE 6A. BUSINESS ASSISTANCE PROGRAM.

13 Sec. 44.88.500. BUSINESS ASSISTANCE FUND. The business assis-  
14 tance fund is established in the authority from appropriations for the  
15 purpose. Subject to the requirements of AS 44.88.500 - 44.88.599, the  
16 authority may use money in the fund

17 (1) to guarantee loans, including loans made to refinance  
18 existing loans, to businesses that qualify under AS 44.88.510(a) and  
19 apply under AS 44.88.520(a); and

20 (2) to refinance the debt of businesses that qualify under  
21 AS 44.88.510(b) and apply under AS 44.88.520(b).

22 Sec. 44.88.510. APPLICANT QUALIFICATIONS. (a) A business  
23 enterprise may apply for a loan guarantee under AS 44.88.500 - 44.88.-  
24 599. The authority may establish additional applicant qualifications  
25 by regulation and these qualifications may vary depending upon the  
26 type of business the applicant is engaged in.

27 (b) A business enterprise may apply under AS 44.88.500 - 44.88.-  
28 599 to refinance existing debt. The authority may approve a refinanc-  
29 ing of existing debt if the authority finds that



1 (1) the refinancing involves a viable project; and

2 (2) the refinancing will save existing jobs.

3 Sec. 44.88.520. APPLICATION. (a) An applicant for a loan  
4 guarantee shall provide information that the authority may require by  
5 regulation. The authority may require submission of an economic  
6 benefit analysis prepared by a person acceptable to the authority.

7 (b) An applicant for refinancing of existing debt shall provide  
8 the information that the authority may require by regulation.

9 Sec. 44.88.530. POWERS OF THE AUTHORITY. The authority may

10 (1) designate agents and delegate powers necessary to  
11 implement AS 44.88.500 - 44.88.599;

12 (2) adopt regulations to implement AS 44.88.500 - 44.88.-  
13 599;

14 (3) establish terms and conditions for loan guarantees and  
15 refinancing agreements subject to the requirements of AS 44.88.500 -  
16 44.88.599;

17 (4) make and execute contracts and other instruments to  
18 implement AS 44.88.500 - 44.88.599;

19 (5) acquire real or personal property by purchase, trans-  
20 fer, or foreclosure when the acquisition is necessary to protect an  
21 interest in the fund; and

22 (6) exercise any other power necessary to implement AS 44.-  
23 88.500 - 44.88.599.

24 Sec. 44.88.540. CONDITIONS OF LOAN GUARANTEES. (a) The author-  
25 ity may guarantee a loan under AS 44.88.500 - 44.88.599 if the

26 (1) loan is commercially reasonable, contains amortization  
27 provisions satisfactory to the authority, is secured by adequate  
28 collateral, and the net cash flow from the borrower provides adequate  
29 coverage for the debt service on the loan;

1 (2) term of the loan does not exceed 20 years;

2 (3) loan is originated with and serviced by a state char-  
3 tered or federally chartered financial institution;

4 (4) portion of the loan not guaranteed by the authority is  
5 held by the originating financial institution or another financial  
6 institution approved by the authority;

7 (5) loan is made to a business with a majority interest  
8 held by state residents; and

9 (6) the loan guarantee provides a benefit to the borrower.

10 (b) The authority may provide a guarantee from the fund for up  
11 to 90 percent of a loan that qualifies under AS 44.88.500 - 44.88.599.  
12 The ratio of the guarantee to the outstanding principal of the loan  
13 may not increase over the term of the loan.

14 (c) The authority may not guarantee

15 (1) the payment of interest on the guaranteed portion of a  
16 loan; or

17 (2) more than \$1,000,000 per loan.

18 Sec. 44.88.550. CONDITIONS OF DEBT REFINANCING. The authority  
19 may not refinance debt unless the refinancing

20 (1) is necessary to extend substantial debt payments over a  
21 longer period of time, thereby improving the applicant's net cash flow  
22 and working capital position consistent with the useful life of the  
23 assets being refinanced;

24 (2) assists with short-term debt or cash expenditures when  
25 lenders will not extend reasonable longer terms to the applicant; or

26 (3) is necessary to place a permanent loan subsequent to an  
27 interim loan for financing construction of the project.

28 Sec. 44.88.560. INTEREST. The maximum interest rate on a loan  
29 guaranteed by the authority is

1 (1) for a loan guarantee that exceeds 80 percent of the  
2 loan, one and one-half percentage points above the prime rate on the  
3 day the loan guarantee is made; and

4 (2) for a loan guarantee that is equal to or less than 80  
5 percent of the loan, two and three-quarters percentage points above  
6 the prime rate on the day the loan guarantee is made.

7 Sec. 44.88.570. DEFAULT OR FORECLOSURE. (a) Payments received  
8 toward satisfaction of a default on a loan guaranteed under AS 44.88.-  
9 500 - 44.88.599 shall be allocated between the lender and the fund  
10 according to the guaranteed percentage of the loan until the principal  
11 balance has been repaid.

12 (b) The authority shall dispose of property acquired through  
13 default or foreclosure of a loan guaranteed or refinanced under  
14 AS 44.88.500 - 44.88.599. Disposal shall be in a manner that serves  
15 the best interest of the state and may include the amortization of  
16 payments over a period of years.

17 Sec. 44.88.580. SPECIAL ACCOUNT ESTABLISHED. (a) There is  
18 established as a special account within the fund the foreclosure  
19 expense account.

20 (b) The authority may expend money credited to the foreclosure  
21 expense account when necessary to protect the state's security inter-  
22 est in collateral on loans guaranteed or refinanced under AS 44.88.-  
23 500 - 44.88.599 or to defray expenses incurred during a foreclosure  
24 proceeding after a default.

25 Sec. 44.88.590. PREREQUISITE FOR OTHER LOANS. Notwithstanding  
26 other provisions of law, a business enterprise that qualifies under  
27 AS 44.88.510(a) to apply for a loan guarantee under AS 44.88.500 -  
28 44.88.599 shall apply for a loan guarantee before it may apply for a  
29 direct loan of state money under any other state loan program. Only



1 after an application for the guarantee of a loan to be used for a  
2 particular purpose is rejected under AS 44.88.500 - 44.88.599 may a  
3 business enterprise apply for a direct state loan for that purpose.

4 Sec. 44.88.599. DEFINITIONS. In AS 44.88.500 - 44.88.599,

5 (1) "fund" means the business assistance fund established  
6 under AS 44.88.500;

7 (2) "prime rate" means the lowest money center prime rate  
8 of interest that is published in the Wall Street Journal.

9 \* Sec. 2. APPLICABILITY. The provisions of AS 44.88.500(2), 44.88.-  
10 510(b), 44.88.520(b), 44.88.530(3), 44.88.550, and 44.88.570(b), added by  
11 sec. 1 of this Act, affirm the power of the Alaska Industrial Development  
12 and Export Authority to refinance debt, but establish limitations on the  
13 exercise of that power.

14 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

5-1863N ✓  
Cook  
4/21/88

Original sponsors: Kelly and Sturgulewski

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to stabilization of the real estate  
7 market; authorizing the establishment of real prop-  
8 erty liquidating organizations; and providing for an  
9 effective date."

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

11 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature  
12 finds that

13 (1) there have been in the state several failures of state and  
14 federally chartered financial institutions and one bank consolidation by  
15 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

16 (2) state and federal agencies currently hold large portfolios  
17 of distressed real estate loans and real property;

18 (3) these financial institutions and government agencies need to  
19 be permitted to cooperate in administering these properties to avoid fur-  
20 ther adverse effects on the state's real estate markets and to stabilize  
21 the state's banking system; and

22 (4) the maintenance of stable and orderly markets for the pur-  
23 chase and sale of commercial and residential real estate in the state is  
24 essential to the economy of the state and the welfare of its citizens.

25 (b) The legislature intends to ensure the stability of the state's  
26 real estate markets and prevent a precipitous decline in real estate prices  
27 by displacing competition with government regulation in matters relating to  
28 the sale and disposition of real property held by financial institutions  
29 and state and federal agencies as a result of foreclosure actions. By

1 authorizing the creation of real property liquidating organizations under  
2 state supervision, the legislature intends to grant authority to the com-  
3 missioner of commerce and economic development to provide by regulation  
4 that persons and entities who subscribe or grant assets to, contribute  
5 funds or services to, obtain a beneficial interest in, or participate in  
6 the management of a real property liquidating organization will be immu-  
7 nized as necessary possible against potential liability under federal  
8 antitrust laws and state antitrust, competition, and trade practices laws  
9 arising from the operation of the organizations.

10 \* Sec. 2. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. The commis-  
13 sioner shall administer this chapter and adopt regulations to carry  
14 out the purposes of this chapter.

15 Sec. 06.50.020. FORMATION. (a) Three or more grantors may  
16 create a real property liquidating organization by filing the orga-  
17 nizational documents with the commissioner. The commissioner shall  
18 review the documents and approve them if they comply with (b) of this  
19 section and are consistent with the purposes of this chapter. Convey-  
20 ance of assets to or disposition of real property or other assets by  
21 an organization is not valid until the organizational documents have  
22 been reviewed and approved by the commissioner.

23 (b) The organizational documents must

24 (1) state the purpose of the organization;

25 (2) identify all grantors who will subscribe to the orga-  
26 nization and all persons who will possess an interest in the orga-  
27 nization;

28 (3) describe the manner in which the organization will be  
29 managed;



1 (4) prescribe the method under which distributions to the  
2 grantors and other beneficiaries will be made;

3 (5) provide for the conveyance to the organization of all  
4 or part of the grantors' portfolios of commercial and residential real  
5 properties in the state or other assets;

6 (6) provide for the orderly disposition of property of the  
7 organization at prices to be established in accordance with the orga-  
8 nizational documents;

9 (7) provide for the expenditure of assets to manage orga-  
10 nization property, including expenditures to preserve or enhance the  
11 value of properties; and

12 (8) provide for the establishment of other terms and con-  
13 ditions relating to the sale or other disposition of assets that the  
14 grantors consider necessary or appropriate to ensure that the orga-  
15 nization will be operated in a manner that will provide for orderly  
16 disposition of property and promote a stable real estate market and  
17 economy.

18 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the  
19 record keeping requirements specified in regulations adopted by the  
20 commissioner or in the organizational documents, the organization  
21 shall retain a certified public accountant to annually prepare and  
22 submit to the department on or before April 1 of each calendar year an  
23 audited balance sheet, income statement, statement of principal,  
24 statement of changes in financial position, and schedule of all dispo-  
25 sitions of real estate assets made by the organization during the  
26 year. In connection with the preparation of the financial documents,  
27 the accountant shall issue letters

28 (1) certifying that all sales of real estate assets and all  
29 distributions during the year were made in accordance with the

1 provisions of the organization documents and this chapter, or identi-  
2 fying any variance; and

3 (2) with respect to the internal financial controls and  
4 practices of the organization, providing recommendations the accoun-  
5 tant considers appropriate.

6 (b) The organization shall prepare and file with the commission-  
7 er, on a quarterly basis, a report containing the following:

8 (1) a schedule of all real property held by the organiza-  
9 tion;

10 (2) the sale price and all other significant terms of sale  
11 for real property sold since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period  
13 that conforms with regulations adopted by the commissioner.

14 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The  
15 commissioner shall review each report filed under (b) of this section  
16 and approve or disapprove the proposed operating plan within 20 days  
17 after filing. In reviewing the operating plan, the commissioner shall  
18 consider current market conditions. Before approving the plan, the  
19 commissioner must find that the plan complies with the purpose of this  
20 chapter.

21 (b) Within five days after the department notifies an organiza-  
22 tion of its intention to inspect business records, all business re-  
23 cords maintained by the organization shall be available for review and  
24 examination by the department at the organization's principal place of  
25 business, during regular business hours. The commissioner shall  
26 examine the business records of an organization on a regular basis at  
27 least twice each calendar year.

28 (c) If the commissioner disapproves the proposed operating plan  
29 or concludes, after examination, that the organization is being



1 administered contrary to statute or regulation, the commissioner shall  
2 notify the organization and all grantors in writing, specifying all  
3 deficiencies and prescribing appropriate remedies. If the organiza-  
4 tion fails to remedy deficiencies in accordance with the commission-  
5 er's prescriptions within 60 days after receipt of the notice, the  
6 commissioner may commence proceedings under AS 06.01.030.

7 (d) The expenses of the department reasonably incurred in re-  
8 viewing and approving a proposed operating plan or conducting an  
9 examination under this section shall be charged to and paid by the  
10 organization in accordance with AS 06.01.010.

11 Sec. 06.50.050. PREEMPTION. If the commissioner determines that  
12 the exemption is necessary to carry out the purposes of this chapter,  
13 the commissioner may by regulation exempt transactions under this  
14 chapter by real property liquidating organizations from any fee,  
15 authorization, permit, filing, or registration requirement of or  
16 administered by the department.

17 Sec. 06.50.100. DEFINITIONS. In this chapter

18 (1) "commissioner" means the commissioner of commerce and  
19 economic development;

20 (2) "department" means the Department of Commerce and  
21 Economic Development;

22 (3) "grantor" means a federally or state chartered finan-  
23 cial institution, federal or state agency, licensed insurer, or fi-  
24 nancing company that conveys assets to, and thereby obtains a benefi-  
25 cial interest in and the right to participate in the management of, a  
26 real property liquidating organization;

27 (4) "real property liquidating organization" or "organiza-  
28 tion" means a corporation, trust, fund, partnership, joint venture, or  
29 other legal entity created to acquire, maintain, manage, market, sell,



1 or otherwise dispose of real property in the state and to distribute  
2 to the beneficiaries, in accordance with the provisions of the orga-  
3 nization documents, the proceeds derived from the sale or disposition  
4 of the property.

5 \* Sec. 3. AS 18.56 is amended by adding a new section to read:

6 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation  
7 may take appropriate action to stabilize the market price of and  
8 demand for residential housing in the state. To accomplish the pur-  
9 poses of this section, the corporation may

10 (1) enter into agreements with state and federally char-  
11 tered financial institutions, state or federal agencies, insurers, and  
12 financing companies for the cooperative management and disposal of  
13 real property owned by the corporation, financial institutions, agen-  
14 cies, or other contracting parties; and

15 (2) convey real property and other assets to, and acquire a  
16 beneficial interest in, a real property liquidating organization  
17 established under AS 06.50.

18 \* Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

19 (25) to convey real property and other assets to, and ac-  
20 quire a beneficial interest in, a real property liquidating orga-  
21 nization established under AS 06.50.

22 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).  
23  
24  
25  
26  
27  
28  
29

**STATE OF ALASKA  
1988 LEGISLATIVE SESSION**

**BILL VERSION: SB 408  
PUBLISH DATE: \_\_\_\_\_**

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_  
Title: An Act relating to the Alaska Sta-  
bilization Assistance Program  
Sponsor: Kelly and Sturgulewski  
Requestor: \_\_\_\_\_

Alaska Industrial Development  
Agency Affected: and Export Authority  
BRU: \_\_\_\_\_  
Components: \_\_\_\_\_

**EXPENDITURES/REVENUES: (Thousands of Dollars)**

| OPERATING         | FY 88 | FY 89      | FY 90   | FY 91   | FY 92    | FY 93 |
|-------------------|-------|------------|---------|---------|----------|-------|
| PERSONAL SERVICES |       |            |         |         |          |       |
| TRAVEL            |       |            |         |         |          |       |
| CONTRACTUAL       |       |            |         |         |          |       |
| SUPPLIES          |       |            |         |         |          |       |
| EQUIPMENT         |       |            |         |         |          |       |
| LAND & STRUCTURES |       |            |         |         |          |       |
| GRANTS, CLAIMS    |       |            |         |         |          |       |
| MISCELLANEOUS     |       |            |         |         |          |       |
| TOTAL OPERATING   |       | zero(0)    | zero(0) | zero(0) | zero(0)  |       |
| CAPITAL           |       | \$15.0 Mil | zero(0) | zero(0) | zero (0) |       |
| REVENUE           |       |            |         |         |          |       |

**FUNDING: (Thousands of Dollars)**

|               |  |            |  |  |  |  |
|---------------|--|------------|--|--|--|--|
| GENERAL FUND  |  |            |  |  |  |  |
| FEDERAL FUNDS |  |            |  |  |  |  |
| OTHER         |  | **         |  |  |  |  |
| TOTAL         |  | \$15.0 Mil |  |  |  |  |

**POSITIONS:**

|           |  |  |  |  |  |  |
|-----------|--|--|--|--|--|--|
| FULL-TIME |  |  |  |  |  |  |
| PART-TIME |  |  |  |  |  |  |
| TEMPORARY |  |  |  |  |  |  |

**ANALYSIS : (Attach a separate page if necessary)**

\*\*Funds will be appropriated from the Railbelt energy fund to the Alaska Stabilization Assistance fund established in the Alaska Industrial Development and Export Authority per SB 408.

Costs of administering the Alaska Stabilization Assistance Program will be absorbed by the Alaska Industrial Development and Export Authority

Prepared by: Bertram I. Wagon, Executive Director Phone: 274-1651

Division: Alaska Industrial Development & Export Authority Date: February 22, 1988

Approved by Commissioner: J. Anthony Smith  
Agency: Commerce and Economic Development

Date: 2/29/88

**Distribution (by preparer):**

Legislative Finance  
Legislative Sponsor  
Requestor  
Office of Management and Budget  
Impacted Agency(ies)

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2

SENATE BILL NO. 408

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to the Alaska stabilization assistance program; and providing for an effective date."

7

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

9

\* Section 1. ALASKA STABILIZATION ASSISTANCE PROGRAM. (a) The purpose of the Alaska stabilization assistance program is to promote the stabilization of real property values in the state.

12

(b) The Alaska stabilization assistance fund is established in the Alaska Industrial Development and Export Authority. The authority may use money appropriated to the fund to carry out the purposes of this section. An appropriation to the Alaska stabilization assistance fund lapses to the fund from which it was appropriated July 1, 1992, unless specified otherwise in the appropriation act. Other receipts shall be separately accounted for and deposited into the general fund. Each year the authority shall notify the legislature of the amount of these receipts and the legislature may appropriate that amount into the Railbelt energy fund established under AS 37.05.153.

22

(c) To encourage lenders not to attempt to dispose of real property in the state that has been foreclosed upon or otherwise acquired through actions taken on defaulted loans until the real estate market in the state becomes more stable, the authority may enter into contracts to provide for the management of the property. However, the authority may provide for the management of property only through June 30, 1992.

28

\* Sec. 2. This Act is repealed July 1, 1992.

29

\* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).



STATE OF ALASKA

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

P. O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-3822

P. O. BOX 210001  
ANCHORAGE, ALASKA 99521  
(907) 561-7612

Feb. 9, 1988

To: All Senators  
From: Senator Tim Kelly **TDK**

re: The Alaska Stabilization Assistance Program (ASAP)  
-----

I am introducing the attached legislation. It's essentially a "generic" bridge bank concept as originally proposed by Dave Rose.

Several different proposals for helping to slow the decline of property values throughout Alaska, and particularly Southcentral, have surfaced. I can support any number of these. If, however, the Legislature cannot within the next 90 days agree upon a more specific proposal, this legislation would enable AIEDA to contract with a separate entity to help maintain a floor on real estate values.

The problem is not just the portfolio the FDIC has assumed in Alaska, but also the Alliance Bank portfolio, which could be an even larger problem, as well as several other institutions and banks with similar serious concerns. If a separate entity can be created to pool these problem properties and effectively prevent competitive "dumping", I believe a service will be done. I understand the Alliance Bank might be interested in exploring such a concept.

I have initially capitalized the ASAP through a \$15 million loan from the Railbelt Energy Fund. I'm not wed to this source of funding. Either AIEDA or General Fund money might be used, but as the problem, while statewide, appears to be predominately a railbelt problem, I'm not shy about proposing borrowing the money from the Railbelt account.

Both private industry and the FDIC have been extremely active in trying to solve this serious problem. I believe the State should also become a limited player at this time.

I urge your co-sponsorship.

STATE OF ALASKA

MEMBER

TENTH ALASKA LEGISLATURE  
ELEVENTH ALASKA LEGISLATURE  
TWELFTH ALASKA LEGISLATURE  
THIRTEENTH ALASKA LEGISLATURE  
FOURTEENTH ALASKA LEGISLATURE  
FIFTEENTH ALASKA LEGISLATURE



P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 485-3222

P.O. BOX 210001  
ANCHORAGE, ALASKA 99521  
(907) 561-7812

SENATOR TIM KELLY

February 8, 1988

TO: Tam Cook  
FROM: Sen. Tim Kelly *TDK*

re: Alaska Stabilization Assistance Program (ASAP)

-----  
Please draft legislation which:

1) Creates a distinct "Alaska Stabilization Assistance Program" within the Alaska Industrial and Export Development Authority (AIEDA);

- a) stating that the purpose of the program is to facilitate the development of a separate organization to promote the stabilization of real estate values in Alaska;
- b) placing the account under the direction of the Board of Directors of AIEDA;
- c) authorizing AIEDA to contract with an entity to assume management of foreclosed upon property held by financial institutions and loans collateralized by real estate, for the purpose of reorganizing and stabilizing that property, and;
- d) stating that AIEDA shall contract to retain management of said property until such time as it is determined that property market values have stabilized and improved.

2) Appropriates \$15 million from the Railbelt Energy Account to the "Alaska Stabilization Assistance Program" of the Alaska Industrial and Export Development Authority, for the purpose of paying operational costs involved in the management of foreclosed property;

Attach a letter stating:

It is the intent of the Legislature that these funds shall be construed as a five year interest bearing loan to AIEDA, with the interest to be determined by the annualized prime rate.

As funds are recovered from the management of this property, these funds shall be returned to the Stabilization Assistance Program which will distribute these funds first to the General Account of the State of Alaska, with appropriate notice to the legislature as to the derivation of these funds so they can be returned to the Railbelt Energy Fund, then to the lending institutions from whom the property management was assumed.

Effective Date: Immediate

**A CONCEPTUAL PLAN FOR AN  
ALASKA STABILIZATION ASSISTANCE PROGRAM**

---

**A FEDERAL, STATE, LOCAL GOVERNMENT  
AND PRIVATE SECTOR PARTNERSHIP**

**This paper expands, clarifies and combines some options set forth in a White Paper entitled "Options to Improve the Alaskan Economy" dated January 1988 and attached hereto.**

**DAR/FEB.88**



These agencies/entities own real estate as the result of foreclosure. They also hold defaulted and delinquent loans secured by real estate.

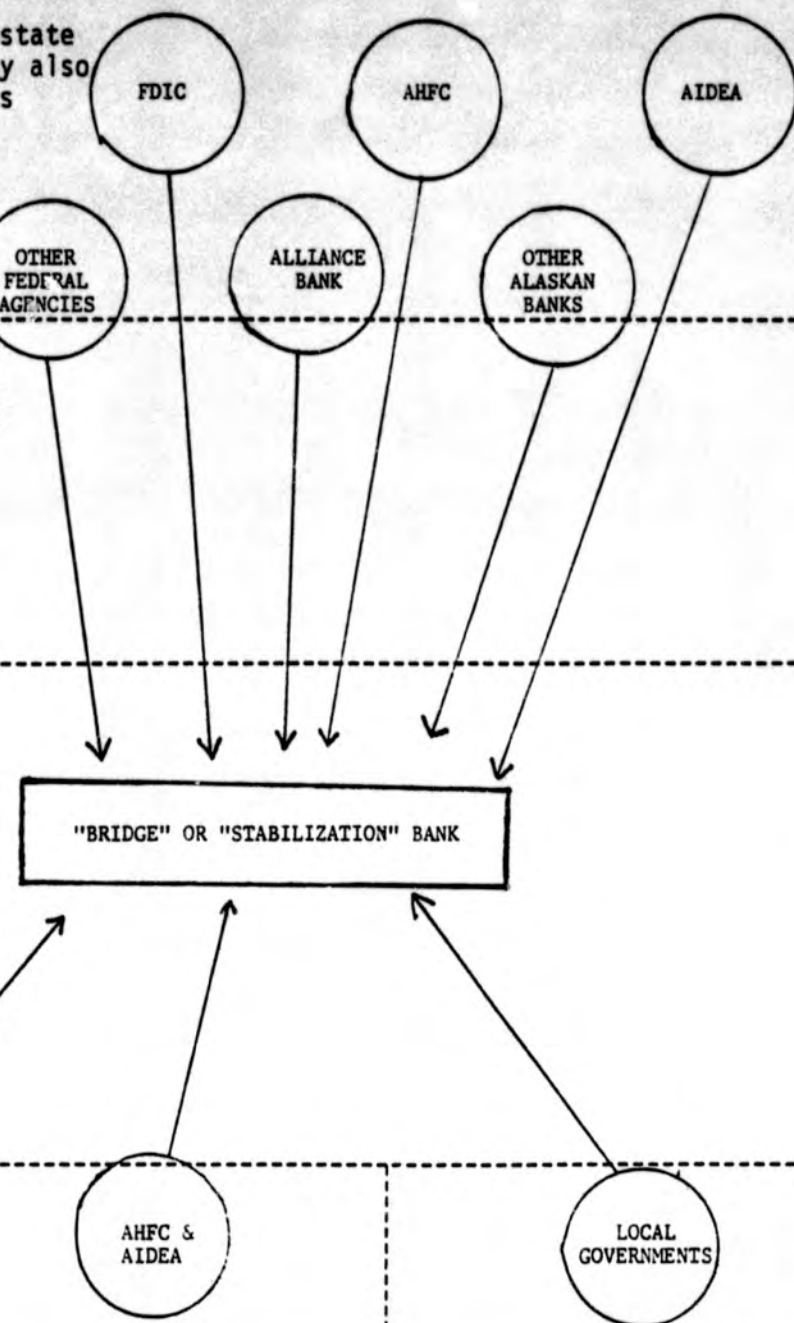
These agencies/entities contribute the above assets to "bridge" bank. They own an undivided interest (on a pro-rata basis in proportion to contribution) in this pool.

Responsible for:

Stabilization  
Loan Reschedules  
Loan Workouts  
Liquification of  
Assets and  
Cash Return  
To Pool Contr-  
ibutors on a  
Pro-rata basis.

If Required.  
Provides working  
capital of about  
\$15,000,000

Receives return of  
above prior to payout  
to pool "owners".



Impose new supply  
moratoriums which  
can be subject to  
waiver upon request  
of local governments.

Restrict new supply:  
Platting  
Zoning  
Utility Expansion

May request waiver of  
moratoriums after public  
hearings.

1. This concept requires the combined efforts of federal, state, local and private entities.... A partnership to address mutual problems and solve them on a cooperative basis.
2. It does not "bail out" anybody. No purchases of assets occur, no checks are written. Those entities who "own" problems continue to own them through pro-rata interests in a common pool.
3. Valuation of assets does not present a problem because no purchase takes place. All assets are valued at municipal assessment levels as of a given date. Valuation is utilized only to determine pro-rata share of the common pool.
4. The pool holds assets to stabilize values, eventually liquifies these assets and returns proceeds to pool owners.
5. The State provides a loan (up to \$15,000,000) for working capital which is repaid prior to distributions to pool owners. This working capital may not be needed if there is adequate cash flow generated by pool assets but it is evidence of the State's interest and intent to help address and solve this problem.
6. State agencies such as AHFC and AIDEA place moratoriums on financing new supply. These can be waived if local governments so request. (General, statewide moratoria may not be in the best interests of those communities which do not have excess supply of all -- or certain types of -- real estate.)
7. Local governments cannot exacerbate the supply problem by encouraging new construction. Therefore they may consider local moratoria on rezones, replats and utility extensions in order to discourage new construction in those categories of real estate where there currently is excess supply.

NOTE: AHFC = Alaska Housing Finance Corporation is an instrumentality of the State.

AIDEA = Alaska Industrial Development and Export Authority is an instrumentality of the State.

### EXECUTION

The establishment of the "Bridge" or "Stabilization" bank is coordinated by a State agency which also serves as the recipient of the State appropriation.

The State agency, using the appropriation (and subsequent loan) as a lever, binds the parties together by contract. It does not operate the bridge bank but does insure that it is contractually obligated to hold assets for stabilization.

The bridge bank is operated by a Board of Directors who set policy and appoint officers who select and direct staff. The Board of Directors of the bridge bank are chosen by the pool participants who vote their pro-rata share of asset contribution.



# Value of Mat-Su property plunges 15 to 20 percent

By DAVID HULEN  
Daily News reporter

**WASILLA** — New figures show that the value of property in the Matanuska-Susitna Borough, which grew like almost no place else in Alaska during the oil boom, has now plummeted to 1984 levels. Some real estate brokers say the price of property is continuing to slide.

Property tax assessment notices to be mailed out by the borough later this month spell out what many homeowners have known or suspected for months — that Mat-Su homes and businesses are worth an average of 15 to 20 percent less than they were a year ago.

To the borough, the drop in the total worth of Mat-Su

property means a shrinking tax base. It'll put the borough assembly in the position later this year of deciding whether to raise tax rates to continue schools and services, making new cuts, or finding new sources of money.

To landowners, it could mean a corresponding drop in property taxes, although that may not be much consolation to people who've watched the real worth of their homes sink below the mortgage value.

The figures, which reflect the prices paid for homes that have been sold over the past year, are just another sign that the economy in the Valley continues its slide, along with the much of the rest of the state. Anchorage is expect-

ted to experience a similar drop this year.

The drop in real estate values — as much as 30 percent on some homes and commercial properties — has resulted in something of a mini-boom in real estate sales, especially in the latter months of 1987, according to several real estate brokers.

"Last year was definitely an improvement over '86," said Kristan Tanner, a Wasilla broker. The slow market had led brokers to dub the area as "Death Valley," she said. Four years ago, there were 275 licensed real estate brokers in the Valley; today there are 105.

"Most of the Realtors that

See Page B-2, VALLEY

## VALLEY: Property values plummet 15 to 20 percent since last year

Continued from Page B-1

are left are doing quite well. It definitely has picked up. We're real happy," Tanner said.

About 600 Mat-Su homes were sold last year, according to borough figures.

The problem, Tanner and others noted, is that the increase in homes being sold is coming at the expense of people being forced to sell their homes at prices lower than their mortgage values. No longer able to make payments, people have been selling homes for whatever they'll bring, and prices have dropped further and further in recent months. Foreclosures and repossessions continue.

"I see institutions panicking and still lowering prices," said Penny Milton, a Wasilla broker whose agency handles homes repossessed by the De-

partment of Housing and Urban Development.

"That pulls everything down. There are a lot of buyers now ... you have investors and people who are renting now. But it's getting to the point where anyone who owns a house here — anyone who bought in during the boom — is facing an impossible situation as far as selling at what they paid."

For the first time, many Mat-Su residents likely are seeing their property assessments from the borough dip below the mortgage value of their homes, said Borough Assessor Gary Lewis. While prices began sliding in Anchorage two or three years ago, the crash hit Mat-Su later and many properties didn't change in value during last year's assessment.

"Just about anybody who bought a house in '83-'84-'85 is looking at negative equity out

here now," he said. About the only things that have held their value, he said, are recreation properties.

The borough assessments are used to compute the amount of property tax owed and are based on selling prices of similar properties. Until last year, the total value of Mat-Su property rose every year from the time the borough was established in 1964, peaking at \$2.4 billion in 1985. Last year, values dropped between 1 percent and 2 percent, and will drop to around \$2 billion this year, Lewis said.

Borough assemblymen have been vowing in recent weeks that they won't try to raise tax rates to make up for it. Instead, they say, they'll continue lobbying for more state assistance, and will consider further cuts when they write budgets this spring.

Mat-Su unemployment in

December was 17.4 percent, the highest in this part of Alaska and nearly double the statewide rate. And that number includes only those classified by the state as actively looking for work, and generally doesn't count seasonal workers and those who only work from time to time.

Many people are working fewer hours or at lower wages. There are almost 1,000 fewer jobs in Mat-Su than two years ago, according to state figures.

No boroughwide population estimate has been done since 1986, but there are signs that people are continuing to trickle outside to get away from the depressed economy. School enrollments and utility connections, for instance, are down about 4 percent from a year ago.

Businesses continue to close; the Chevrolet dealership in Wasilla is among the

major ones to go under in recent months.

Although it is not dramatic, there have been a few positive signs. Some new retail businesses have opened. Over the next couple of weeks, VECO Inc., plans to temporarily hire between 50 and 60 ironworkers, welders and heavy equipment operators to build a pair of oilfield modules for use on the North Slope. The jobs, paying an average of about \$15 an hour, are expected to last until March.

The \$45 million Colony school project near Palmer has kept a flicker of heavy construction activity alive, with as many as 100 workers. The schools are scheduled to be completed later this year, although, because of drops in school budgets and number of pupils, it remains unclear whether the schools will be opened.

WORK DRAFT

WORK DRAFT

WORK DRAFT

HEARING  
THURSDAY  
SEN. FIN.

5-1863X  
Cook  
4/16/88

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

2 SPONSOR SUBSTITUTE FOR SENATE BILL NO. 408

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to stabilization of the real estate  
7 market; authorizing the establishment of real prop-  
8 erty liquidating organizations; and providing for an  
9 effective date."

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

11 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature  
12 finds that

13 (1) there have been in the state several failures of state and  
14 federally chartered financial institutions and one bank consolidation by  
15 the Federal Deposit Insurance Corporation under 12 U.S.C. 1823(c);

16 (2) state and federal agencies currently hold large portfolios  
17 of distressed real estate loans and real property;

18 (3) these financial institutions and government agencies need to  
19 be permitted to cooperate in administering these properties to avoid fur-  
20 ther adverse effects on the state's real estate markets and to stabilize  
21 the state's banking system; and

22 (4) the maintenance of stable and orderly markets for the pur-  
23 chase and sale of commercial and residential real estate in the state is  
24 essential to the economy of the state and the welfare of its citizens.

25 (b) The legislature intends to ensure the stability of the state's  
26 real estate markets and prevent a precipitous decline in real estate prices  
27 by displacing competition with government regulation in matters relating to  
28 the sale and disposition of real property held by financial institutions  
29 and state and federal agencies as a result of foreclosure actions. By



1 authorizing the creation of real property liquidating organizations under  
2 state supervision, the legislature intends to grant authority to the com-  
3 missioner of commerce and economic development to provide by regulation  
4 that persons and entities who subscribe or grant assets to, contribute  
5 funds or services to, obtain a beneficial interest in, or participate in  
6 the management of a real property liquidating organization will be immu-  
7 nized as necessary possible against potential liability under federal  
8 antitrust laws and state antitrust, competition, and trade practices laws  
9 arising from the operation of the organizations.

10 \* Sec. 2. AS 06 is amended by adding a new chapter to read:

11 CHAPTER 50. REAL PROPERTY LIQUIDATING ORGANIZATIONS.

12 Sec. 06.50.010. RESPONSIBILITY OF COMMISSIONER. The commis-  
13 sioner shall administer this chapter and adopt regulations to carry  
14 out the purposes of this chapter.

15 Sec. 06.50.020. FORMATION. (a) Three or more grantors may  
16 create a real property liquidating organization by filing the orga-  
17 nizational documents with the commissioner. The commissioner shall  
18 review the documents and approve them if they comply with (b) of this  
19 section and are consistent with the purposes of this chapter. Convey-  
20 ance of assets to or disposition of real property or other assets by  
21 an organization is not valid until the organizational documents have  
22 been reviewed and approved by the commissioner.

23 (b) The organizational documents must

24 (1) state the purpose of the organization;

25 (2) identify all grantors who will subscribe to the orga-  
26 nization and all persons who will possess an interest in the orga-  
27 nization;

28 (3) describe the manner in which the organization will be  
29 managed;



1 (4) prescribe the method under which distributions to the  
2 grantors and other beneficiaries will be made;

3 (5) provide for the conveyance to the organization of all  
4 or part of the grantors' portfolios of commercial and residential real  
5 properties in the state or other assets;

6 (6) provide for the orderly disposition of property of the  
7 organization at prices to be established in accordance with the orga-  
8 nizational documents;

9 (7) provide for the expenditure of assets to manage orga-  
10 nization property, including expenditures to preserve or enhance the  
11 value of properties; and

12 (8) provide for the establishment of other terms and con-  
13 ditions relating to the sale or other disposition of assets that the  
14 grantors consider necessary or appropriate to ensure that the orga-  
15 nization will be operated in a manner that will provide for orderly  
16 disposition of property and promote a stable real estate market and  
17 economy.

18 Sec. 06.50.030. AUDITS AND REPORTS. (a) In addition to the  
19 record keeping requirements specified in regulations adopted by the  
20 commissioner or in the organizational documents, the organization  
21 shall retain a certified public accountant to annually prepare and  
22 submit to the department on or before April 1 of each calendar year an  
23 audited balance sheet, income statement, statement of principal,  
24 statement of changes in financial position, and schedule of all dispo-  
25 sitions of real estate assets made by the organization during the  
26 year. In connection with the preparation of the financial documents,  
27 the accountant shall issue letters

28 (1) certifying that all sales of real estate assets and all  
29 distributions during the year were made in accordance with the

1 provisions of the organization documents and this chapter, or identi-  
2 fying any variance; and

3 (2) with respect to the internal financial controls and  
4 practices of the organization, providing recommendations the accoun-  
5 tant considers appropriate.

6 (b) The organization shall prepare and file with the commission-  
7 er, on a quarterly basis, a report containing the following:

8 (1) a schedule of all real property held by the organiza-  
9 tion;

10 (2) the sale price and all other significant terms of sale  
11 for real property sold since the date of the previous report; and

12 (3) a proposed operating plan for the next quarterly period  
13 that conforms with regulations adopted by the commissioner.

14 Sec. 06.50.040. REVIEW AND APPROVAL BY COMMISSIONER. (a) The  
15 commissioner shall review each report filed under (b) of this section  
16 and approve or disapprove the proposed operating plan within 20 days  
17 after filing. In reviewing the operating plan, the commissioner shall  
18 consider current market conditions. Before approving the plan, the  
19 commissioner must find that the plan complies with the purpose of this  
20 chapter.

21 (b) Within five days after the department notifies an organiza-  
22 tion of its intention to inspect business records, all business re-  
23 cords maintained by the organization shall be available for review and  
24 examination by the department at the organization's principal place of  
25 business, during regular business hours. The commissioner shall  
26 examine the business records of an organization on a regular basis at  
27 least twice each calendar year.

28 (c) If the commissioner disapproves the proposed operating plan  
29 or concludes, after examination, that the organization is being



1 administered contrary to statute or regulation, the commissioner shall  
2 notify the organization and all grantors in writing, specifying all  
3 deficiencies and prescribing appropriate remedies. If the organiza-  
4 tion fails to remedy deficiencies in accordance with the commission-  
5 er's prescriptions within 60 days after receipt of the notice, the  
6 commissioner may commence proceedings under AS 06.01.030.

7 (d) The expenses of the department reasonably incurred in re-  
8 viewing and approving a proposed operating plan or conducting an  
9 examination under this section shall be charged to and paid by the  
10 organization in accordance with AS 06.01.010.

11 Sec. 06.50.050. PREEMPTION. If the commissioner determines that  
12 the exemption is necessary to carry out the purposes of this chapter,  
13 the commissioner may by regulation exempt real property liquidating  
14 organizations from any state law other than this chapter or from any  
15 regulation other than one adopted under this chapter.

16 Sec. 06.50.100. DEFINITIONS. In this chapter,

17 (1) "commissioner" means the commissioner of commerce and  
18 economic development;

19 (2) "department" means the Department of Commerce and  
20 Economic Development;

21 (3) "grantor" means a federally or state chartered finan-  
22 cial institution, federal or state agency, licensed insurer, or fi-  
23 nancing company that conveys assets to, and thereby obtains a benefi-  
24 cial interest in and the right to participate in the management of, a  
25 real property liquidating organization;

26 (4) "real property liquidating organization" or "organiza-  
27 tion" means a corporation, trust, fund, partnership, joint venture, or  
28 other legal entity created to acquire, maintain, manage, market, sell,  
29 or otherwise dispose of real property in the state and to distribute



1 to the beneficiaries, in accordance with the provisions of the orga-  
2 nization documents, the proceeds derived from the sale or disposition  
3 of the property.

4 \* Sec. 3. AS 18.56 is amended by adding a new section to read:

5 Sec. 18.56.210. MARKET STABILIZATION POWERS. The corporation  
6 may take appropriate action to stabilize the market price of and  
7 demand for residential housing in the state. To accomplish the pur-  
8 poses of this section, the corporation may

9 (1) enter into agreements with state and federally char-  
10 tered financial institutions, state or federal agencies, insurers, and  
11 financing companies for the cooperative management and disposal of  
12 real property owned by the corporation, financial institutions, agen-  
13 cies, or other contracting parties; and

14 (2) convey real property and other assets to, and acquire a  
15 beneficial interest in, a real property liquidating organization  
16 established under AS 06.50.

17 \* Sec. 4. AS 44.88.080 is amended by adding a new paragraph to read:

18 (25) to convey real property and other assets to, and ac-  
19 quire a beneficial interest in, a real property liquidating orga-  
20 nization established under AS 06.50.

21 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).  
22  
23  
24  
25  
26  
27  
28  
29

5-1796N  
Chenoweth  
4/5/88

Original sponsors: Halford, Faiks,  
Uehling, et al.

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 471 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a program in the Alaska Indus-  
7 trial Development and Export Authority to guarantee  
8 business loans and to refinance debt; and providing  
9 for an effective date."

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

11 \* Section 1. AS 44.88 is amended by adding new sections to read:

12 ARTICLE 6A. BUSINESS ASSISTANCE PROGRAM.

13 Sec. 44.88.500. BUSINESS ASSISTANCE FUND. The business assis-  
14 tance fund is established in the authority from appropriations for the  
15 purpose and from money in the authority's reserves. Subject to the  
16 requirements of AS 44.88.500 - 44.88.599, the authority may use money  
17 in the fund

18 (1) to guarantee loans, including loans made to refinance  
19 existing loans, to businesses that qualify under AS 44.88.505 and  
20 apply under AS 44.88.510; and

21 (2) to refinance the debt of businesses that qualify under  
22 AS 44.88.545 and apply under AS 44.88.550.

23 Sec. 44.88.505. QUALIFICATIONS OF APPLICANT FOR LOAN GUARANTEE.  
24 A business enterprise may apply for a loan guarantee under AS 44.88.-  
25 500 - 44.88.599. The authority may establish additional applicant  
26 qualifications by regulation and these qualifications may vary depend-  
27 ing upon the type of business the applicant is engaged in.

28 Sec. 44.88.510. APPLICATION FOR LOAN GUARANTEE. An applicant  
29 for a loan guarantee shall provide information that the authority may



1 require by regulation. The authority may require submission of an  
2 economic benefit analysis prepared by a person acceptable to the  
3 authority.

4 Sec. 44.88.515. CONDITIONS OF LOAN GUARANTEES. (a) The author-  
5 ity may guarantee a loan under AS 44.88.500 - 44.88.599 if the

6 (1) loan is commercially reasonable, contains amortization  
7 provisions satisfactory to the authority, is secured by adequate  
8 collateral, and the net cash flow from the borrower provides adequate  
9 coverage for the debt service on the loan;

10 (2) term of the loan does not exceed 20 years;

11 (3) loan is originated with and serviced by a state char-  
12 tered or federally chartered financial institution;

13 (4) portion of the loan not guaranteed by the authority is  
14 held by the originating financial institution or another financial  
15 institution approved by the authority;

16 (5) loan is made to a business with a majority interest  
17 held by state residents; and

18 (6) the loan guarantee provides a benefit to the borrower.

19 (b) The authority may provide a guarantee from the fund for up  
20 to 90 percent of a loan that qualifies under AS 44.88.500 - 44.88.599.  
21 The ratio of the guarantee to the outstanding principal of the loan  
22 may not increase over the term of the loan.

23 (c) The authority may not guarantee the payment of interest on  
24 the guaranteed portion of a loan.

25 Sec. 44.88.520. LIMITATIONS OF LOAN GUARANTEES FROM THE FUND.  
26 The authority may not guarantee

27 (1) a total of more than \$50,000,000 of loans;

28 (2) more than \$25,000,000 of loans in which the amount of  
29 the loan guarantee exceeds \$500,000.

*25/1000*



1       Sec. 44.88.525. LIMITATIONS OF LOAN GUARANTEES WITH RESPECT TO  
2 BORROWERS. The authority may not guarantee person acceptable to the  
3 authority. (1) a loan of more than \$1,000,000;

4       (2) loans to an individual borrower that cumulatively  
5 exceed \$1,000,000 of indebtedness.

6       Sec. 44.88.530. INTEREST ON GUARANTEED LOAN. The maximum inter-  
7 est rate on a loan guaranteed by the authority is

8       (1) for a loan guarantee that exceeds 80 percent of the  
9 loan, one and one-half percentage points above the prime rate on the  
10 day the loan guarantee is made; and

11       (2) for a loan guarantee that is equal to or less than 80  
12 percent of the loan, two and three-quarters percentage points above  
13 the prime rate on the day the loan guarantee is made.

14       Sec. 44.88.535. DEFAULT OR FORECLOSURE OF A GUARANTEED LOAN.

15       (a) Payments received toward satisfaction of a default on a loan  
16 guaranteed under AS 44.88.500 - 44.88.599 shall be allocated between  
17 the lender and the fund according to the guaranteed percentage of the  
18 loan until the principal balance has been repaid.

19       (b) The authority shall dispose of property acquired through  
20 default or foreclosure of a loan guaranteed under AS 44.88.500 -  
21 44.88.599. Disposal shall be in a manner that serves the best in-  
22 terest of the state and may include the amortization of payments over  
23 a period of years.

24       Sec. 44.88.540. RELATIONSHIP TO OTHER LOANS. Notwithstanding  
25 other provisions of law, a business enterprise that qualifies under  
26 AS 44.88.505 to apply for a loan guarantee under AS 44.88.500 - 44.-  
27 88.599 shall apply for a loan guarantee before it may apply for a  
28 direct loan of state money under any other state loan program. Only  
29 after an application for the guarantee of a loan to be used for a

1 particular purpose is rejected under AS 44.88.500 - 44.88.599 may a  
2 business enterprise apply for a direct state loan for that purpose.

3 Sec. 44.88.545. QUALIFICATIONS OF APPLICANT FOR DEBT REFINANC-  
4 ING. A business enterprise may apply under AS 44.88.500 - 44.88.599  
5 to refinance existing debt. The authority may approve a refinancing  
6 of existing debt if the authority finds that

7 (1) the refinancing involves a viable project; and

8 (2) the refinancing will save existing jobs.

9 Sec. 44.88.550. APPLICATION FOR DEBT REFINANCING. An applicant  
10 for refinancing of existing debt shall provide the information that  
11 the authority may require by regulation.

12 Sec. 44.88.555. CONDITIONS OF DEBT REFINANCING. The authority  
13 may not refinance debt unless the refinancing

14 (1) is necessary to extend substantial debt payments over a  
15 longer period of time, thereby improving the applicant's net cash flow  
16 and working capital position consistent with the useful life of the  
17 assets being refinanced;

18 (2) assists with short-term debt or cash expenditures when  
19 lenders will not extend reasonable longer terms to the applicant; or

20 (3) is necessary to place a permanent loan subsequent to an  
21 interim loan for financing construction of the project.

22 Sec. 44.88.560. DEFAULT OR FORECLOSURE OF A REFINANCED LOAN.

23 (a) The authority shall dispose of property acquired through default  
24 or foreclosure of a loan refinanced under AS 44.88.500 - 44.88.599.  
25 Disposal shall be in a manner that serves the best interest of the  
26 state and may include the amortization of payments over a period of  
27 years.

28 Sec. 44.88.565. POWERS OF THE AUTHORITY. The authority may

29 (1) designate agents and delegate powers necessary to



1 implement AS 44.88.500 - 44.88.599;

2 (2) adopt regulations to implement AS 44.88.500 - 44.88.-  
3 599;

4 (3) establish terms and conditions for loan guarantees and  
5 refinancing agreements subject to the requirements of AS 44.88.500 -  
6 44.88.599;

7 (4) make and execute contracts and other instruments to  
8 implement AS 44.88.500 - 44.88.599;

9 (5) acquire real or personal property by purchase, trans-  
10 fer, or foreclosure when the acquisition is necessary to protect an  
11 interest in the fund; and

12 (6) exercise any other power necessary to implement AS 44.-  
13 88.500 - 44.88.599.

14 Sec. 44.88.570. SPECIAL ACCOUNT ESTABLISHED. (a) There is  
15 established as a special account within the fund the foreclosure  
16 expense account.

17 (b) The authority may expend money credited to the foreclosure  
18 expense account when necessary to protect the state's security inter-  
19 est in collateral on loans guaranteed or refinanced under AS 44.88.-  
20 500 - 44.88.599 or to defray expenses incurred during a foreclosure  
21 proceeding after a default.

22 Sec. 44.88.599. DEFINITIONS. In AS 44.88.500 - 44.88.599,

23 (1) "fund" means the business assistance fund established  
24 under AS 44.88.500;

25 (2) "prime rate" means the lowest money center prime rate  
26 of interest that is published in the Wall Street Journal.

27 \* Sec. 2. PROCEDURES GOVERNING PROGRAM REVIEW. (a) AS 44.66.050 and  
28 44.66.060 apply to AS 44.88.500 - 44.88.599 (Business Assistance Program of  
29 the Alaska Industrial Development and Export Authority).



1 (b) The First Session of the Seventeenth Alaska State Legislature  
2 shall conduct the legislative oversight proceedings required by (a) of this  
3 section.

4 \* Sec. 3. AS 44.88.500 - 44.88.599 are repealed July 1, 1991.

5 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

*SBA short funded in our area*  
*A. & D.A.*

5-1796P -  
Chenoweth  
4/7/88

Original sponsors: Halford, Faiks,  
Uehling, et al.

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 - CS FOR SENATE BILL NO. 471 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a program in the Alaska Indus-  
7 trial Development and Export Authority to guarantee  
8 business loans; and providing for an effective date."

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

10 \* Section 1. AS 44.88 is amended by adding new sections to read:

11 ARTICLE 6A. BUSINESS ASSISTANCE PROGRAM.

12 Sec. 44.88.500. BUSINESS ASSISTANCE FUND. (a) The business  
13 assistance fund is established in the authority from money in the  
14 authority's reserves designated by the authority for the purpose.  
15 Subject to the requirements of AS 44.88.500 - 44.88.599, the authority  
16 may use money in the fund

17 (1) to guarantee new loans; and

18 (2) to guarantee loans made to refinance existing loans.

19 (b) The holder of a debt instrument for a loan guaranteed by the  
20 authority does not have recourse to the assets of the authority beyond  
21 those designated by the authority from its reserves for the purpose.

22 Sec. 44.88.505. QUALIFICATIONS OF APPLICANT FOR NEW LOAN GUARAN-  
23 TEE. (a) A business enterprise may apply for a new loan guarantee  
24 under AS 44.88.500(a)(1).

25 (b) The authority may establish additional applicant qualifica-  
26 tions by regulation. These qualifications may vary depending upon the  
27 type of business the applicant is engaged in.

28 Sec. 44.88.510. APPLICATION FOR NEW LOAN GUARANTEE. An appli-  
29 cant for a new loan guarantee shall provide information that the

1 authority may require by regulation. The authority may require sub-  
2 mission of an economic benefit analysis prepared by a person accept-  
3 able to the authority.

4 Sec. 44.88.515. QUALIFICATIONS OF APPLICANT FOR DEBT REFINANCING  
5 GUARANTEE. A business enterprise may apply under AS 44.88.500(a)(2)  
6 to guarantee the refinancing of existing debt.

7 Sec. 44.88.520. APPLICATION FOR DEBT REFINANCING GUARANTEE. An  
8 applicant for a debt refinancing guarantee shall provide the informa-  
9 tion that the authority may require by regulation.

10 Sec. 44.88.525. CONDITIONS OF DEBT REFINANCING GUARANTEE. The  
11 authority may not guarantee refinanced debt

12 (1) unless the refinancing

13 (A) is necessary to extend substantial debt payments  
14 over a longer period of time, thereby improving the applicant's  
15 net cash flow and working capital position consistent with the  
16 useful life of the assets being refinanced;

17 (B) assists with short-term debt or cash expenditures  
18 when lenders will not extend reasonable longer terms to the  
19 applicant; and

20 (C) creates additional economic opportunity or im-  
21 proves the viability of the borrower rather than just reducing  
22 the liability of the lender; or

23 (2) unless the refinancing is necessary to place a perma-  
24 nent loan subsequent to an interim loan for financing construction of  
25 the project.

26 Sec. 44.88.530. APPLICABILITY OF PROVISIONS. AS 44.88.535 -  
27 44.88.560 apply to

28 (1) new loan guarantees under AS 44.88.500(a)(1); and

29 (2) debt refinancing guarantees under AS 44.88.500(a)(2).



1           Sec. 44.88.535. CONDITIONS OF LOAN GUARANTEE. (a) The author-  
2           ity may guarantee a loan under AS 44.88.500 - 44.88.599 if the

3                 (1) loan is commercially reasonable, contains amortization  
4                 provisions satisfactory to the authority, is secured by adequate  
5                 collateral, and the net cash flow from the borrower provides adequate  
6                 coverage for the debt service on the loan;

7                 (2) term of the loan does not exceed 20 years;

8                 (3) loan is originated with and serviced by a state char-  
9                 tered or federally chartered financial institution;

10                (4) loan guaranteed by the authority is held by the orig-  
11                inating financial institution or another financial institution ap-  
12                proved by the authority;

13                (5) loan is made to a business with a majority interest  
14                held by state residents; and

15                (6) loan guarantee provides a benefit to the borrower.

16                (b) The authority may provide a guarantee from the fund for up  
17                to 75 percent of a loan that qualifies under AS 44.88.500 - 44.88.599.  
18                The ratio of the guarantee to the outstanding principal of the loan  
19                may not increase over the term of the loan.

20                (c) The authority may not guarantee the payment of interest on  
21                the guaranteed portion of a loan.

22                Sec. 44.88.540. LIMITATIONS OF GUARANTEES FROM THE FUND. The  
23                authority may not guarantee

24                    (1) a total of more than \$50,000,000 of loans;

25                    (2) more than \$25,000,000 of loans in which the amount of  
26                    the loan guarantee exceeds \$500,000.

27                Sec. 44.88.545. LIMITATIONS OF GUARANTEES WITH RESPECT TO BOR-  
28                ROWERS. The authority may not guarantee

29                    (1) a loan of more than \$1,000,000;

*ind or  
ind who owns 10% of  
a corp*

*10% is INDIVIDUAL*

(2) loans to an individual borrower that cumulatively exceed \$1,000,000 of indebtedness.

Sec. 44.88.550. INTEREST ON GUARANTEED LOAN. The maximum interest rate on a loan guaranteed by the authority is

(1) for a loan guarantee that exceeds 65 percent of the loan, one and one-half percentage points above the prime rate on the day the loan guarantee is made; and

(2) for a loan guarantee that is equal to or less than 65 percent of the loan, two and three-quarters percentage points above the prime rate on the day the loan guarantee is made.

Sec. 44.88.555. SERVICING OF GUARANTEED LOANS. (a) The financial institution that holds a loan guaranteed by the authority under AS 44.88.500 - 44.88.599 shall

- (1) service the loan;
- (2) exercise diligence in collecting amounts due under the loan; and
- (3) comply with all requirements of the loan guarantee agreement.

(b) Amounts received toward satisfaction of a default on a loan guaranteed under AS 44.88.500 - 44.88.599 shall be allocated between the lender and the fund according to the guaranteed percentage of the loan until the principal balance has been repaid.

Sec. 44.88.560. POWERS OF THE AUTHORITY. The authority may

- (1) adopt regulations to implement AS 44.88.500 - 44.88.599;
- (2) establish terms and conditions for loan guarantees and refinancing agreements subject to the requirements of AS 44.88.500 - 44.88.599;
- (3) make and execute contracts and other instruments to



1 implement AS 44.88.500 - 44.88.599;

2 *19 to 4th*  
3 *Amendment* (4) acquire real or personal property by purchase, trans-  
4 fer, or foreclosure when the acquisition is necessary to protect an  
5 interest in the fund; and

6 (5) exercise any other power necessary to implement AS 44.-  
7 88.500 - 44.88.599.

8 Sec. 44.88.599. DEFINITIONS. In AS 44.88.500 - 44.88.599,

9 (1) "fund" means the business assistance fund established  
10 under AS 44.88.500;

11 (2) "prime rate" means the lowest money center prime rate  
12 of interest that is published in the Wall Street Journal.

13 \* Sec. 2. PROCEDURES GOVERNING PROGRAM REVIEW. (a) AS 44.66.050 and  
14 44.66.060 apply to AS 44.88.500 - 44.88.599 (Business Assistance Program of  
15 the Alaska Industrial Development and Export Authority).

16 (b) The First Session of the Seventeenth Alaska State Legislature  
17 shall conduct the legislative oversight proceedings required by (a) of this  
18 section.

19 \* Sec. 3. AS 44.88.500 - 44.88.599 are repealed July 1, 1991.

20 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).

21 *loans to be dist. equitably.*



WORK DRAFT

WORK DRAFT

WORK DRAFT

5-2095B  
Cook  
4/20/88

Original sponsor: Finance Committee

1 IN THE SENATE

BY THE LABOR AND  
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 502 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL.

6 For an Act entitled: "An Act relating to the economic stabilization pro-  
7 gram; and providing for an effective date."

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

9 \* Section 1. FINDINGS AND PURPOSE. (a) The legislature finds that

10 (1) financial institutions that are chartered in the state and  
11 have a principal place of business in the state provide a substantial  
12 portion of consumer, housing, and small business loans in the state and are  
13 an important source of financing for the state's small businesses;

14 (2) these financial institutions have, in the last two years,  
15 lost a portion of their capital due to some circumstances not of their mak-  
16 ing;

17 (3) some of these financial institutions are having problems  
18 adequately serving the communities in which they maintain branches and  
19 fulfill their historic role of providing an alternative source of financing  
20 in the state's marketplace;

21 (4) the state can invest money in these financial institutions,  
22 thereby reducing the risk of future problems in the real estate market;

23 (5) these financial institutions will be able to increase their  
24 lending by a factor of at least 10 times the amount of money received by  
25 them from the state investments.

26 (b) The purpose of the legislature in establishing the economic  
27 stabilization program is to provide a source of money that can be invested  
28 in financial institutions that are chartered in the state and have a prin-  
29 cipal place of business in the state so that their capital can be in-

1 creased. The legislature intends to achieve this purpose by authorizing  
2 the Alaska Industrial Development and Export Authority to invest in inter-  
3 est-bearing debentures of these financial institutions which shall be  
4 repaid or redeemed at maturity.

5 \* Sec. 2. ECONOMIC STABILIZATION PROGRAM. (a) The economic stabi-  
6 lization program is established in the Alaska Industrial Development and  
7 Export Authority. Under this program the authority is authorized to use up  
8 to \$15,000,000 for investments in debentures issued by a financial institu-  
9 tion with

10 (1) a charter issued by the state;

11 (2) its principal office located in the state; and

12 (3) assets that totaled on December 31, 1987, less than  
13 \$150,000,000 when combined with assets of all its affiliates.

14 (b) The Alaska Industrial Development and Export Authority may not  
15 make an investment under this section until

16 (1) at least one public hearing has been held on the proposed  
17 investment; and

18 (2) the authority and the director of banking, securities and  
19 corporations make a written finding that the proposed investment is in the  
20 public interest.

21 (c) The Alaska Industrial Development and Export Authority may charge  
22 a fee in connection with investments under this section that the authority  
23 considers to be reasonable. The authority may only invest in debentures  
24 that

25 (1) pay interest quarterly or more often;

26 (2) bear interest at a rate established by the authority that is  
27 not less than one and one-half percent above the prime rate as determined  
28 by the authority; in establishing interest the authority shall consider the  
29 cost of brokered deposits;

WORK DRAFT

WORK DRAFT

WORK DRAFT

1 invest at least 15 percent of the purchase price in areas of the state  
2 outside of metropolitan areas within three years after receipt of the  
3 purchase price. The authority shall by regulation define "metropolitan  
4 areas" for purposes of this subsection.

5 \* Sec. 3. This Act is repealed July 1, 1990.

6 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



liability of the stockholders is valid until it is approved by the department.

(c) If a state bank fails to maintain its total adjusted capital accounts and reserves in an amount equal to the substandard assets as reported by the Federal Deposit Insurance Corporation or the state in a bank's latest report of examination, the department shall consider the failure as endangering the safety of the depositor and may direct the bank's directors to increase the capital accounts in an amount sufficient to cover substandard assets. (§ 3.202 ch 129 SLA 1951; am § 11 ch 230 SLA 1968; am §§ 6, 7 ch 63 SLA 1969; am § 21 ch 169 SLA 1978)

**Effect of amendment.** — The 1978 amendment substituted "paid-in capital" for "a paid-up capital," "\$250,000" for "\$100,000," "paid-in surplus" for "a paid-up surplus," and "of paid-in capital" for "of paid-up capital" in subsection (a), added the language beginning "and it is unlawful" to the end of subsection (a), deleted former subsection (b), designated

former subsections (c) and (d) as present subsections (b) and (c), rewrote the second sentence of present subsection (b), and substituted "Federal Deposit Insurance Corporation" for "FDIC" in subsection (c).

**Editor's note.** — Section 55, ch. 169, SLA 1978, contains a severability clause.

**C.J.S. reference.** — 9 C.J.S. Banks and Banking § 58.

**Sec. 06.05.307. Capital notes or debentures.** (a) A bank organized under the laws of this state may, with the approval of stockholders owning two-thirds of the stock of the bank entitled to vote or without this approval if authorized by its articles of incorporation, issue convertible or nonconvertible capital notes or debentures with the written consent of the department. The principal amount of notes and debentures outstanding at any time may not exceed  $33\frac{1}{3}$  per cent of the capital stock and surplus fund of the bank at the date of issue. The rate and term are subject to the approval of the department but in no event may the term be more than 20 years after the date of issue.

(b) No bank may retire capital notes or debentures if the retirement creates an impairment of its capital. Capital notes and debentures are subordinated in right of payment in the event of insolvency or liquidation of the bank to the prior payment of all deposits and all claims of other creditors except the holders of securities on a parity with the capital notes and debentures and the holders of securities expressly subordinated to the capital notes and debentures.

(c) Bank assets may not be pledged to secure capital notes and debentures but the bank may, for the security and the protection of the holders of the capital notes and debentures, agree through its board of directors to restrict the payment of dividends.

(d) The amount of outstanding notes and debentures not maturing within one year shall be added to the capital, surplus account, and undivided profits of the issuing bank for the purpose of determining the maximum amount that may be loaned by the bank as provided in § 205 of this chapter.

WORK DRAFT

WORK DRAFT

WORK DRAFT

5-2103X

Bradley  
5/6/88

Original sponsor: Judiciary Committee

1 IN THE SENATE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 515 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to foreclosure of a deed of trust or  
7 a suit on a deed of trust note; and providing for an  
8 effective date."

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

10 \* Section 1. AS 34.20.070(a) is amended to read:

11 (a) If a deed of trust is executed conveying real property  
12 located in the state to a trustee as security for the payment of an  
13 indebtedness and the deed provides that in case of default or noncom-  
14 pliance with the terms of the trust, the trustee may sell the property  
15 for condition broken, the trustee, in addition to the right of fore-  
16 closure and sale, may execute the trust by sale of the property, upon  
17 the conditions and in the manner set forth in the deed of trust,  
18 without first securing a decree of foreclosure and order of sale from  
19 the court, if the trustee has complied with the notice requirements of  
20 (b) of this section. If the deed of trust is foreclosed judicially or  
21 the note secured by the deed of trust is sued on and a judgment is ob-  
22 tained by the beneficiary, the beneficiary may not exercise the  
23 nonjudicial remedies described in this section.

24 \* Sec. 2. AS 34.20 is amended by adding a new section to read:

25 Sec. 34.20.160. NOTICE OF OTHER REMEDIES. (a) When a lender  
26 uses a note as evidence of an obligation secured by a mortgage or deed  
27 of trust, the note must affirmatively advise the mortgagor or trustor  
28 and any other party bound by the note if the mortgagee or beneficiary  
29 wants the option to bring suit directly on the note to collect an



1 amount owing under the note without first foreclosing the mortgage or  
2 deed of trust. This option must be stated in writing within the note  
3 or as a separate document. If a note executed after the effective  
4 date of this Act fails to contain the notice specified in this sec-  
5 tion, the debt secured by the mortgage or deed of trust may be fore-  
6 closed under AS 09.45.170 - 09.45.220 or AS 34.20.070 - 34.20.135.

7 (b) If the mortgagee or beneficiary wishes to collect an amount  
8 owing under the note without first foreclosing the mortgage or deed of  
9 trust, the following language is sufficient in the note:

10 The mortgagor or trustor (borrower) is personally obligated  
11 and fully liable for the amount due under the note. The  
12 mortgagee or beneficiary (lender) has the right to sue on  
13 the note and obtain a personal judgment against the mort-  
14 gator or trustor for satisfaction of the amount due under  
15 the note either before or after a judicial foreclosure of  
16 the mortgage or deed of trust under AS 09.45.170 - 09.45.-  
17 220.

18 \* Sec. 3. APPLICABILITY. Section 1 of this Act applies to deed of  
19 trust foreclosure proceedings and suits on a deed of trust note that are in  
20 progress during, or that begin after, the effective date of this Act,  
21 unless the real property has been sold before the effective date of this  
22 Act under AS 34.20.080, or unless a judgment has been entered before the  
23 effective date of this Act in a judicial foreclosure action or judicial  
24 action for breach of contract arising out of the deed of trust.

25 \* Sec. 4. This Act takes effect immediately under AS 01.10.070(c).  
26  
27  
28  
29



WORK DRAFT

WORK DRAFT

WORK DRAFT

5-2091B  
Bradley  
4/21/88

Original sponsor: Rules/House Members  
of the Joint Committee  
on Economic Recovery

1 IN THE HOUSE

BY THE STATE AFFAIRS COMMITTEE

2 CS FOR HOUSE BILL NO. 555 (State Affairs)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-  
7 ration to stabilize the market price of and the  
8 demand for residential housing in the state; and  
9 providing for an effective date."

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

11 \* Section 1. AS 18.56 is amended by adding a new section to read:

12 Sec. 18.56.210. MARKET STABILIZATION POWERS. (a) If the board  
13 of directors determines that it is in the best interest of the corpo-  
14 ration, the corporation may take appropriate action under this sec-  
15 tion to stabilize the market price of and demand for residential  
16 housing in the state. To accomplish the purposes of this section, the  
17 corporation may

18 (1) make and execute necessary agreements and conveyances  
19 under which a borrower may exchange residential housing securing a  
20 mortgage loan owned, held, or sold by the corporation for other res-  
21 idential housing owned by the corporation;

22 (2) repurchase a mortgage loan sold or pledged by the  
23 corporation for the purpose of exercising a power conferred by this  
24 section;

25 (3) for the purpose of qualifying residential housing  
26 situated in a condominium project for the best available financing for  
27 mortgage loans, make and execute agreements and contracts necessary to  
28 encourage all owners who occupy units in a condominium project that is  
29 not eligible for financing under this chapter to exchange their

1 ownership interest for a condominium unit owned by the corporation in  
2 another project;

3 (4) make and execute appropriate agreements with insurers,  
4 investors, and guarantors concerning the temporary removal of residen-  
5 tial housing owned by the corporation from the resale market;

6 (5) demolish residential housing owned by the corporation  
7 if the corporation determines that

8 (A) the housing is substandard compared to housing  
9 available on the open market;

10 (B) the housing cannot be converted to a public or  
11 charitable use; and

12 (C) there is a substantial oversupply of similar  
13 housing on the open market;

14 (6) convert residential housing owned by the corporation  
15 that is designed and constructed for owner occupancy to another bene-  
16 ficial use;

17 (7) make bulk sales of property owned by the corporation  
18 under procedures and terms the corporation determines are in the best  
19 interests of the corporation;

20 (8) provide financing under terms established by the board  
21 to promote the sale of residential housing owned by the corporation if  
22 the board of directors determines that the terms of financing do not  
23 work an excessive hardship on competing individual sellers of residen-  
24 tial housing;

25 (9) invest funds of the corporation in the removal and  
26 disposal of substandard publicly-owned residential housing if the  
27 board of directors determines that the investment is prudent, properly  
28 secured, and in the long-term best interests of the corporation;

29 (10) create subsidiary entities to implement a power



1 conferred by this section and to provide insurance under AS 18.56.093  
2 and 18.56.095; and

3 (11) take other actions necessary, convenient, or desirable  
4 to carry out the powers granted in this subsection.

5 (b) The corporation shall implement the powers conferred by (a)  
6 of this section by adopting regulations under AS 18.56.088.

7 \* Sec. 2. AS 45.50.572 is amended by adding a new subsection to read:

8 (i) AS 45.50.562 - 45.50.596 do not prohibit activities of the  
9 Alaska Housing Finance Corporation to stabilize the market price of  
10 and demand for residential housing in the state under AS 18.56.210.

11 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29



Offered: 5/7/88  
Referred: Rules

Original sponsor: Rules/House Members  
of the Joint Committee  
on Economic Recovery

14/5 w/ letter  
JP tent 5-2091X  
H.A.D.  
Sponer

1 IN THE HOUSE

BY THE FINANCE COMMITTEE

2 SENATE CS FOR CS FOR HOUSE BILL NO. 555 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-  
7 ration to stabilize the market price of and the  
8 demand for residential housing in the state; and  
9 providing for an effective date."

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

11 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature  
12 finds that

13 (1) the Alaska Housing Finance Corporation and other financial  
14 institutions currently hold large portfolios of foreclosed residential  
15 housing;

16 (2) these financial institutions should be permitted to cooper-  
17 ate in administering foreclosed properties to avoid further adverse effects  
18 on the state's real estate markets and to stabilize the state's banking  
19 system;

20 (3) it is in the state's best interests in certain instances to  
21 reduce the supply of residential housing in the state by demolishing sub-  
22 standard publicly owned residential housing;

23 (4) residential housing situated in condominium projects with  
24 high vacancy rates caused by defaults and foreclosures presents special  
25 problems because mortgage investors and insurers have established con-  
26 ditions relating to owner-occupancy that adversely affect the ability to  
27 sell or finance a mortgage loan secured by a condominium unit; and

28 (5) the maintenance of stable and orderly markets for the pur-  
29 chase and sale of residential housing in the state is essential to the



1 economy of the state and the welfare of its citizens.

2 (b) The legislature intends to improve the stability of the state's  
3 market for residential housing. It is desirable to prevent a precipitous  
4 decline in the price of available housing that will erode the tax base of  
5 municipalities and further weaken the state's financial institutions. The  
6 legislature intends to accomplish these ends by government regulation of  
7 matters relating to the sale and disposition of residential housing held by  
8 financial institutions, the Alaska Housing Finance Corporation, and federal  
9 agencies. By authorizing the Alaska Housing Finance Corporation to exer-  
10 cise the market stabilization powers enacted in sec. 2 of this Act, the  
11 legislature intends to immunize to the fullest extent possible the board of  
12 directors of the Alaska Housing Finance Corporation against potential  
13 liability under federal antitrust and state antitrust, competition, and  
14 trade practices laws arising from the exercise of stabilization powers.

15 \* Sec. 2. AS 18.56 is amended by adding a new section to read:

16 Sec. 18.56.210. MARKET STABILIZATION POWERS. (a) If the board  
17 of directors determines that it is in the best interest of the corpo-  
18 ration, the corporation may take appropriate action under this sec-  
19 tion to stabilize the market price of and demand for residential  
20 housing in the state. To accomplish the purposes of this section, the  
21 corporation may

22 (1) make and execute necessary agreements and conveyances  
23 under which a borrower may exchange residential housing securing a  
24 mortgage loan owned, held, or sold by the corporation for other res-  
25 idential housing owned by the corporation;

26 (2) repurchase a mortgage loan sold or pledged by the  
27 corporation for the purpose of exercising a power conferred by this  
28 section;

29 (3) for the purpose of qualifying residential housing

1       situated in a condominium project for the best available financing for  
2       mortgage loans, make and execute agreements and contracts necessary to  
3       encourage all owners who occupy units in a condominium project that is  
4       not eligible for financing under this chapter to exchange their owner-  
5       ship interest for a condominium unit owned by the corporation in  
6       another project;

7               (4) make and execute appropriate agreements with insurers,  
8       investors, and guarantors concerning the temporary removal of residen-  
9       tial housing owned by the corporation from the resale market;

10              (5) convert residential housing owned by the corporation  
11       that is designed and constructed for owner occupancy to another bene-  
12       ficial use;

13              (6) make bulk sales of property owned by the corporation  
14       under procedures and terms the corporation determines are in the best  
15       interests of the corporation;

16              (7) after giving due consideration to the interests of  
17       competing individual sellers of residential housing, provide financing  
18       under terms established by the board to promote the sale of residen-  
19       tial housing owned by the corporation;

20              (8) invest funds of the corporation in the removal and  
21       disposal of substandard publicly owned residential housing if the  
22       board of directors determines that the investment is prudent, properly  
23       secured, and in the long-term best interests of the corporation;

24              (9) create subsidiary entities to implement a power con-  
25       ferred by this section and to provide insurance under AS 18.56.093 and  
26       18.56.095; and

27              (10) establish the interest rate on a mortgage loan for  
28       residential housing in the rural areas of the state at one percent  
29       less than the interest rate determined under AS 18.56.098(g)(1) - (4);



1           (11) take other actions necessary, convenient, or desirable  
2       to carry out the powers granted in this subsection.

3           (b) The corporation shall implement the powers conferred by (a)  
4       of this section by adopting regulations under AS 18.56.088.

5       \* Sec. 3. AS 45.50.572 is amended by adding a new subsection to read:

6           (i) AS 45.50.562 - 45.50.596 do not prohibit activities of the  
7       Alaska Housing Finance Corporation to stabilize the market price of  
8       and demand for residential housing in the state under AS 18.56.210.

9       \* Sec. 4. (a) The stabilization fund is established in the Alaska  
10     Housing Finance Corporation. Notwithstanding AS 18.56.210(a)(8), the fund  
11     may be expended by the corporation to make a grant to a state agency to  
12     finance the cost of demolishing state-owned residential housing.

13           (b) It is the intent of the legislature that the board of directors  
14     of the Alaska Housing Finance Corporation transfer \$2,700,000 from the  
15     Alaska Housing Finance revolving fund (AS 18.56.082) to the stabilization  
16     fund established in (a) of this section.

17       \* Sec. 5. Section 4 of this Act is repealed July 1, 1991.

18       \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

Original sponsor: Rules/House Members  
of the Joint Committee  
on Economic Recovery

1 IN THE HOUSE BY THE FINANCE COMMITTEE  
2 CS FOR HOUSE BILL NO. 555 (Finance)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION  
5 A BILL  
6 For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-  
7 ration to stabilize the market price of and the  
8 demand for residential housing in the state; and  
9 providing for an effective date."  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
11 \* Section 1. LEGISLATIVE FINDINGS AND INTENT. (a) The legislature  
12 finds that  
13 (1) the Alaska Housing Finance Corporation and federal agencies  
14 currently hold large portfolios of foreclosed residential housing;  
15 (2) these governmental agencies should be permitted to cooperate  
16 in administering foreclosed properties to avoid further adverse effects on  
17 the state's real estate markets and to stabilize the state's banking sys-  
18 tem;  
19 (3) it is in the state's best interests in certain instances to  
20 reduce the supply of residential housing in the state by demolishing sub-  
21 standard publicly owned residential housing;  
22 (4) residential housing situated in condominium projects with  
23 high vacancy rates caused by defaults and foreclosures presents special  
24 problems because mortgage investors and insurers have established con-  
25 ditions relating to owner-occupancy that adversely affect the ability to  
26 sell or finance a mortgage loan secured by a condominium unit; and  
27 (5) the maintenance of stable and orderly markets for the pur-  
28 chase and sale of residential housing in the state is essential to the  
29 economy of the state and the welfare of its citizens.

1 (b) The legislature intends to improve the stability of the state's  
2 market for residential housing. It is desirable to prevent a precipitous  
3 decline in the price of available housing that will erode the tax base of  
4 municipalities and further weaken the state's financial institutions. The  
5 legislature intends to accomplish these ends by government regulation of  
6 matters relating to the sale and disposition of residential housing held by  
7 financial institutions, the Alaska Housing Finance Corporation, and federal  
8 agencies. By authorizing the Alaska Housing Finance Corporation to exer-  
9 cise the market stabilization powers enacted in sec. 2 of this Act, the  
10 legislature intends to immunize to the fullest extent possible the board of  
11 directors of the Alaska Housing Finance Corporation against potential  
12 liability under federal antitrust and state antitrust, competition, and  
13 trade practices laws arising from the exercise of stabilization powers.

14 \* Sec. 2. AS 18.56 is amended by adding a new section to read:

15 Sec. 18.56.210. MARKET STABILIZATION POWERS. (a) If the board  
16 of directors determines that it is in the best interest of the corpo-  
17 ration, the corporation may take appropriate action under this sec-  
18 tion to stabilize the market price of and demand for residential  
19 housing in the state. To accomplish the purposes of this section, the  
20 corporation may

21 (1) make and execute necessary agreements and conveyances  
22 under which a borrower may exchange residential housing securing a  
23 mortgage loan owned, held, or sold by the corporation for other res-  
24 idential housing owned by the corporation;

25 (2) repurchase a mortgage loan sold or pledged by the  
26 corporation for the purpose of exercising a power conferred by this  
27 section;

28 (3) for the purpose of qualifying residential housing  
29 situated in a condominium project for the best available financing for



1 mortgage loans, make and execute agreements and contracts necessary to  
2 encourage all owners who occupy units in a condominium project that is  
3 not eligible for financing under this chapter to exchange their owner-  
4 ship interest for a condominium unit owned by the corporation in  
5 another project;

6 (4) make and execute appropriate agreements with insurers,  
7 investors, and guarantors concerning the temporary removal of residen-  
8 tial housing owned by the corporation from the resale market;

9 (5) demolish residential housing owned by the corporation  
10 if the corporation determines that

11 (A) the housing is substandard compared to housing  
12 available on the open market;

13 (B) the housing cannot be converted to a public or  
14 charitable use; and

15 (C) there is a substantial oversupply of similar  
16 housing on the open market;

17 (6) convert residential housing owned by the corporation  
18 that is designed and constructed for owner occupancy to another bene-  
19 ficial use;

20 (7) make bulk sales of property owned by the corporation  
21 under procedures and terms the corporation determines are in the best  
22 interests of the corporation;

23 (8) provide financing under terms established by the board  
24 to promote the sale of residential housing owned by the corporation if  
25 the board of directors determines that the terms of financing do not  
26 work an excessive hardship on competing individual sellers of residen-  
27 tial housing;

28 (9) invest funds of the corporation in the removal and  
29 disposal of substandard publicly owned residential housing if the

1 board of directors determines that the investment is prudent, properly  
2 secured, and in the long-term best interests of the corporation;  
3 (10) create subsidiary entities to implement a power con-  
4 ferred by this section and to provide insurance under AS 18.56.093 and  
5 18.56.095; and  
6 (11) take other actions necessary, convenient, or desirable  
7 to carry out the powers granted in this subsection.  
8 (b) The corporation shall implement the powers conferred by (a)  
9 of this section by adopting regulations under AS 18.56.088.  
10 \* Sec. 3. AS 45.50.572 is amended by adding a new subsection to read:  
11 (i) AS 45.50.562 - 45.50.596 do not prohibit activities of the  
12 Alaska Housing Finance Corporation to stabilize the market price of  
13 and demand for residential housing in the state under AS 18.56.210.  
14 \* Sec. 4. (a) The stabilization fund is established in the Alaska  
15 Housing Finance Corporation. Notwithstanding AS 18.56.210(a)(9), the fund  
16 may be expended by the corporation to make a grant to a state agency to  
17 finance the cost of demolishing state-owned residential housing.  
18 (b) It is the intent of the legislature that the board of directors  
19 of the Alaska Housing Finance Corporation transfer \$2,700,000 from the  
20 Alaska Housing Finance revolving fund (AS 18.56.082) to the stabilization  
21 fund established in (a) of this section.  
22 \* Sec. 5. Section 4 of this Act is repealed July 1, 1991.  
23 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).

SENATE AMENDMENT

# 2

BY: Josephson

TO: \_\_\_\_\_ SENATE BILL NO. \_\_\_\_\_  
TO: \_\_\_\_\_ CS HOUSE BILL NO. 555

AMENDMENT TO AMENDMENT NO. 1

After the semicolon (;) at the end of subparagraph (a), insert "and";

Delete subparagraph (b) and reletter subparagraph (c) accordingly.

(TURN IN ORIGINAL AMENDMENT TO SENATE SECRETARY'S OFFICE.  
THE AMENDMENT WILL BE NUMBERED, COPIED AND DISTRIBUTED.)



BY: Josephson, Binkley, Duncan, Eliason, Hensley, and Zharoff

PROPOSED AMENDMENT TO HB 555

*Senate Amendment #1*

DELETE ON PAGE 3, LINES 27-29 AND REPLACE WITH:

(10) PURCHASE LOANS FROM THE HOUSING ASSISTANCE LOAN FUND (AS 44.47.380) IF AND ONLY IF:

(A) THE PAYMENTS OF PRINCIPAL AND INTEREST ON THE LOANS ARE DEPOSITED IN A SEPARATE FUND OF THE CORPORATION TO BE USED FOR THE PURPOSES, AND SUBJECT TO THE STANDARDS AND CRITERIA, OF AS 44.47.360-44.47.500 AS THOSE STATUTES PROVIDED ON THE EFFECTIVE DATE OF THIS ACT;

(B) THE LOANS ARE PURCHASED AT FAIR MARKET VALUE; AND

(C) THE CORPORATION HAS ESTABLISHED A SOURCE OF MORTGAGE INSURANCE FOR NEW LOANS SUBJECT TO THE PROVISIONS OF AS 44.47.360-AS 44.47.560.

*as amended  
18-1  
S. Zharoff*

LETTER OF INTENT

(CS HB 555 (Finance))

It is the intent of the Senate that an oversight committee composed of two members from each house be appointed by the President of the Senate and the Speaker of the House of Representatives. This committee shall advise and assist Alaska Housing Finance Corporation in stabilizing the real estate portfolio of the corporation.

Offered: 3/4/88  
Referred: Judiciary and  
Finance

Original sponsors: Donley, Ellis,  
Boucher, et al.

*make signature  
in neg. agency  
might be the  
answer*

5-1644B

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 432 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act authorizing the Alaska Housing Finance Corpo-

7

ration to accept trades in certain cases; and provid-

8

ing for an effective date."

9

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

10

\* Section 1. PURPOSE AND AUTHORIZATION. (a) The legislature finds

11

that a sizeable proportion of the residents of the state have mortgages

12

that exceed both the present value of the property and the present ability

13

of the mortgagors of the property to make the payments agreed to in the

14

past. The purpose of this Act is to direct the Alaska Housing Finance

15

Corporation to use creative solutions to the present crisis in the housing

16

market and, at the same time, to permit the corporation to seek the dis-

17

posal of surplus residences within the corporation's inventory.

18

(b) The Alaska Housing Finance Corporation may permit mortgagors who

19

are experiencing difficulty in meeting their mortgage payments to return

20

the residence and its mortgage to the Alaska Housing Finance Corporation

21

and to enter into a new mortgage for different residential property subject

22

to the control of the corporation at rates that are more within the ability

23

of the mortgagors.

24

(c) The Alaska Housing Finance Corporation may also permit a mortga-

25

gor who is willing to accept the responsibility for a larger mortgage to

26

offer an existing residence and its mortgage to the corporation and enter

27

into a new mortgage for different residential property subject to the

28

control of the corporation.

29

(d) The Alaska Housing Finance Corporation, the mortgage insurers,



1 and the mortgagor shall, in each case, work together to reduce the negative  
2 equity that may be present in individual cases.

3 (e) Subject to appropriations, the Alaska Housing Finance Corporation  
4 may use up to 1 percent of its total fund equity to achieve the purposes of  
5 this section.

6 (f) In this section, "residence" includes mobile homes.

7 \* Sec. 2. This Act is repealed July 1, 1991.

8 \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).

*could be as much as  
15MM.*

*wanted to be handled in equitable  
fashion -*

*Suggest a cert - neg equity  
How much underwater.  
A. H. F. C. use cert - carry to  
new property -*

# MEMORANDUM

*Sen. Sturgulewski*  
State of Alaska

TO: See Distribution

DATE: March 7, 1988

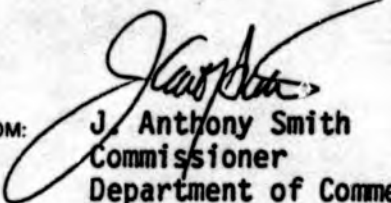
FILE NO:

TELEPHONE NO:

THRU:

SUBJECT: Comments on Various  
Economic Recovery  
Proposals

FROM:

  
J. Anthony Smith  
Commissioner  
Department of Commerce and  
Economic Development

Due to the number of issues being discussed relative to legislative suggestions for possible actions to address our economic troubles, we are providing the following comments on a number of various issues/bills.

1. SB 392 & HB 402 -- AIDEA -- These bills address the issue of bank participation with AIDEA and the current statutory withholding of such participation because of the "2% rule." The Governor's bill, HB 402, also addresses a number of other issues which the Board of AIDEA has identified as limitations on AIDEA's ability to be responsive to the current economic conditions. The Department of Commerce and Economic Development supports both of these bills, and strongly supports passage of the entire package of proposals contained in HB 402.
2. SB 471 -- AIDEA Loan Guarantees and Refinancing -- Both of these issues have been the subject of considerable discussion among the board members of AIDEA. There is not at this time a consensus of opinion on the board on the relative merits or structure of either proposal. All members of the board are most concerned about preserving AIDEA's current bonding ability and ratings. Hence, close scrutiny must be utilized when incorporating any new financial service into AIDEA's powers.

The Department of Commerce and Economic Development is conceptually supportive of both proposals. With respect to the guarantee program, we believe it is most appropriate to fund the reserve for such a program by new appropriation to AIDEA. For consideration, we suggest that a portion of the current unappropriated portfolio of DCED's Division of Investments be appropriated to fund a reserve for the insurance program. The funded reserve will be the only asset offered to insure against losses, e.g., neither AIDEA nor the state

pledge any additional assets or responsibility. There will be losses in the program irrespective of the quality of the underwriting standards, but these losses will appear at least a year or two in the future. We also recommend that there be a 1-to-4 ratio of reserves to program commitment at the start with the Board of AIDEA having the flexibility to adjust reserves to reflect actual experience. This means that there needs to be an appropriation of loans which will generate \$25 million if we are to do \$100 million in guarantees for the program to have the impact desired. We recommend a \$100 million program at the start.

3. HB 422 -- Payment for Purchases by Various Public Entities -- DCED supports this expansion of current law.
4. HB 429 -- Optional Exemption from Property Taxes on Vacated Land -- The Department is supportive of this concept and would suggest elimination of the limitation of its applications by removing the 30-year-old requirement on improvements currently included in the bill. So long as this proposal does not directly affect the revenues of the state, and is optimal for local governments, it should be considered.
5. HB 430 - 431 -- Neighborhood Business Development Programs and Appropriation -- The Department is conceptually supportive of these bills. We understand the difficulties associated with balancing the state's budget and do not represent that this is an essential \$3 million item. Hence, a threshold question is identifying a source of funding.

In addition to HB 429, 430, and 431, it is our perception that an appropriate public sector response to the supply/demand problem is public acquisition of developments for purposes of parks, neighborhood upgrade and to eliminate obsolete or nonconforming properties. Thus, special appropriations to entities such as the Heritage Land Bank and local governments would allow local governments and the state to take advantage of present price levels to improve the quality of life while beneficially impacting the supply/demand problem.

6. HB 432 -- AHFC Trades -- We are conceptually supportive of this bill; although by this time the Labor and Commerce Committee is fully cognizant of the limitations on AHFC's ability to unilaterally achieve the ends sought in this bill. The approach currently undertaken by the Labor and Commerce Committee seems to reasonably address this issue.

There are other changes in AHFC which would allow the agency to manage its revenues to be part of the solution rather than part of the problem. For example, AS 18.56.098 needs to be altered so that the interest rate formula is more flexible. Some recommended changes are:



Financial Provisions Changes - Currently, many AHFC financial provisions are "hard-wired." For instance, the interest rate formula as specified in AS 18.56.098 permits no flexibility in interest rate calculation, even though at times adding some flexibility could significantly help the market at little or no additional cost to AHFC.

One way to add some flexibility would be to develop a mechanism whereby the maximum amount of assistance that AHFC can provide for any individual loan is set, but the specific way in which it was applied would be flexible. Another possible change would be to permit more flexibility in the amount of assistance if the whole market was in bad shape. For instance, if the delinquency rate in a particular market exceeded, say, 10%. Additional assistance would have to be targeted at certain groups to achieve specified outcomes, or very quickly AHFC could use up its available resources.

For instance, assume AHFC wanted to target the condo market, either for trade ups to mid-high range condos, or to encourage the purchase of some of the many low end condos. Many of the current condo loans were based on a loan amount of \$75-80,000, with an interest rate of 10-12%. Consider the following figures:

| <u>Loan Amount</u> | <u>Interest Rate</u> | <u>Payment</u> |
|--------------------|----------------------|----------------|
| \$ 80,000          | 10%                  | \$702          |
| 125,000            | 6%                   | 749            |
| 50,000             | 6%                   | 300            |

In one case, a borrower can buy much more "house" for approximately the same payment, whereas in the other case, a borrower could buy a \$50,000 condo (which was likely originally an \$80,000 condo) for a payment of less than half of the original. Properly targeted this could help stabilize price and reduce the inventory of foreclosed properties. It is our belief that the "equity underwater" problem could be stabilized in targeted projects by offering financing opportunities for full prices sales.

Other changes would deal with AHFC's role in disposing of its real estate portfolio. For instance, if current plans are successful, AHFC could well own entire condo projects. These projects could eventually be sold as condos, but they might also be sold as apartment buildings. If AHFC were able to manage the building (via a contract) and perhaps provide financing to the ultimate buyer, the total loss might be much less. Possibly other types of nonowner-occupied financings to help in disposal of foreclosed properties should be added.

More flexibility would be most helpful in workout situations. HOAP will be sufficient for a great number of troubled borrowers, others will need far more assistance. AHFC, in conjunction with the applicable insurance companies, should be able to provide assistance to these borrowers in a variety of ways -- much lower interest rate, deferral of principal payments, etc. To hold down the ultimate cost of the program and to provide more assistance than is needed, AHFC should be able to design various approaches to recapturing some of this assistance if the property ever appreciates in value beyond its original loan amount.

We have discussed with various individuals the thought of establishing a subsidiary corporation of AHFC which would be granted broader powers to address critical issues in Alaska's current housing market. Such a subsidiary may be charged with acquisitions and/or eminent domain powers to achieve public purposes. Further, it could facilitate the consolidation of condominium owners to allow for the conversion of other condominium projects to other uses, including apartment complexes and public sector housing. We believe all such ideas should be explored in detail and are appropriate items to try to adopt this legislative session.

Lastly, AHFC should be given broader investment powers so that it could participate in acquisitions such as Hollywood Vista and Willow Park when it makes economic sense for the agency.

7. HB 433 -- Moratoriums on Judicial and Nonjudicial Foreclosures -- This is intended as a parochial attempt to preserve for Alaskans a greater opportunity to preserve their residence at the expense of lenders, a good portion of whom are nonresident. Similiar legislation was adopted in two mid-western states as responses to the farm crisis. Their experience should be studied in detail before passage of this legislation.

While the approach has appeal on its surface, it appears to also generate considerable technical questions, especially with respect to bonded indebtedness of various Alaska debt issuers. Further, as probably the largest financier of Alaska real estate, various state entities, including the retirement funds, may be injured by this approach. We are also concerned about the potential ramifications if "outside" lenders respond to passage of this legislation by further restricting access of Alaskans to secondary money markets.

We are also confused by the language which suggests that a non-judicial foreclosure entitles the mortgagor to a right of redemption. This appears to be antithetical to the main purpose of nonjudicial foreclosures.

March 7, 1988

8. SCR xx -- Loan Approval Withheld for New Construction -- The Department has been asked to comment on a draft of this resolution. We do not agree with this approach. We do agree that financing agencies must be sensitive to the oversupply of several categories of real estate and should coordinate their financing policies to assure that they do not inadvertently exacerbate a serious problem. We also believe that the inventory of some classes of property may require additional construction to meet a growing demand in the near term. It would be much more appropriate, from our perspective, to allow market forces and coordinated state policy development, such as through the Alaska Housing Marketing Council, to address the concerns expressed in this draft resolution. For example, there are market segments which would be severely paralyzed by a generalized moratorium. It is more appropriate to add private sector representatives to the Housing Market Council.

We feel any response of this nature should be in the manner in which municipalities issue building permits and carry out inspections. As Chairman of AHFC, it seems indisputable that many of AHFC's problem projects were not inspected.

#### Other

Bridge Bank and Hallwood Trust - we conceptually support these, as well as other initiatives to have assets held by the FDIC or banks managed to minimize the adverse impact on the economy. There needs to be consideration given to both the management difficulties and the carrying costs which will be incurred. In addition, we need to recognize that any state guarantee or stand-by letter of credit could most likely be used.

There are three possible options at this time. Any one, or a combination of these, may work. They are the Anchorage Economic Development Corp., the Sealaska REIT group, and the Hallwood Trust. Should the state choose to participate in one of these structures, it should be prepared to contribute cash as well as properties. Cash flows to fund such an entity will not likely, in the short run, be sufficient to meet expenses. Hence, initial capitalization will be important to help assure success -- understanding that success includes the avoidance of increases of property liquidations.

#### Distribution

Garrey Peska, Chief of Staff, Office of the Governor  
Bob Evans, Legislative Liaison, Office of the Governor  
The Honorable Jan Faiks  
The Honorable Max Gruenberg  
The Honorable David Donley  
Gregg Erickson, Office of Management & Budget,

JAS/sh5144M  
3488c



NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

MARSHALL LEE CONRAD and )  
COLLEEN M. CONRAD, )  
 )  
Appellants/Respondents, )  
 )  
v. )  
 )  
COUNSELLORS INVESTMENT CO., )  
a partnership; BRIAN J. )  
BRUNDIN; BILL LAWRENCE; )  
MARCUS R. CLAPP; JERRY E. )  
MELCHER; and JAMES M. POWELL, )  
 )  
Appellees/Petitioners. )  
 )

File No. S-1996/2102

O P I N I O N

[No. 3275 - February 26, 1988]

Appeal in File No. S-1996 from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Gerald J. Van Hoomissen, Judge. Petition for Review in File No. S-2102 from the Superior Court of the State of Alaska, Fourth Judicial District, Fairbanks, Jay Hodges, Judge.

Appearances: Barry Donnellan, Fairbanks, for Appellants/Respondents. Timothy R. Byrnes, James M. Gorski, Hughes, Thorsness, Gantz, Powell, and Brundin, Anchorage, for Appellees/Petitioners.

Before: Matthews, Chief Justice, Rabinowitz, Compton, and Moore, Justices. [Burke, Justice, not participating.]

COMPTON, Justice.

This appeal presents two questions. The first question is whether secured creditors agreed to limit their remedy to nonjudicial foreclosure of their security. The second is whether the creditors' subsequent claim for judicial foreclosure of that security is precluded by the judgment in a prior suit on the note.

#### I. FACTUAL AND PROCEDURAL BACKGROUND

Counsellors Investment Co. (Counsellors)<sup>1</sup> purchased commercial property in Fairbanks from Marshall Lee Conrad and Colleen M. Conrad. In partial payment for the property, Counsellors gave the Conrads a note secured by a second deed of trust.

Counsellors eventually stopped making payments on the note and offered to reconvey the property to the Conrads in satisfaction of the debt. The Conrads declined the offer and sued Counsellors and its partners for a personal judgment on the note (Conrad I).

The superior court entered summary judgment for Counsellors on the ground that the Conrads' "remedy under their note and deed of trust is that provided in Paragraph B6 of the deed of trust and in AS 34.20.070-.135, and that [the Conrads] may not

---

1. Counsellors is a general partnership. The partners are Brian Brundin, Bill Lawrence, Marcus Clapp, Jerry Melcher and James Powell.

maintain a suit on the promissory note alone;" in other words, the Conrads' remedy was limited to nonjudicial foreclosure of the security. Since the judgment form submitted by Counsellors was not consistent with some of the court's oral conclusions, the Conrads moved to amend the judgment to clarify whether they had the right to foreclose judicially. The court denied the motion and entered an order prohibiting the Conrads from exercising "any remedy inconsistent with the deed of trust." However, the court struck language in the proposed order which expressly precluded an action for judicial foreclosure.

The Conrads appealed the judgment in Conrad I and filed a complaint for judicial foreclosure and a deficiency judgment (Conrad II). Counsellors moved to dismiss the complaint, arguing that the Conrads' claim for judicial foreclosure was barred by the judgment in Conrad I. The superior court denied the motion to dismiss because "the question of judicial foreclosure was not before the court in the [prior] action" and "the right of the Conrads to maintain this action for judicial foreclosure of a deed of trust is granted by AS 09.45.170." Counsellors petitioned for review. We granted review and consolidated the cases for appeal.

II. CONRAD I: DID THE CREDITORS AGREE TO LIMIT THEIR REMEDY TO NONJUDICIAL FORECLOSURE OF THE SECURITY?

The Conrads argue that they have the right initially to ignore their security and sue on the note, or to file a complaint



for judicial foreclosure. Counsellors does not dispute that a secured creditor generally has that option; however, it contends that the deed of trust expressly limits the Conrads' remedy to nonjudicial foreclosure.

In Moening v. Alaska Mutual Bank, \_\_ P.2d \_\_, Op. No. 3274 at 6 (Alaska, February 26, 1988), we held that absent an agreement to the contrary, a secured creditor has the option whether to sue on the note or foreclose the security. If the creditor sues on the note and obtains a personal judgment which is returned unsatisfied, the creditor may then foreclose the security. Id.; AS 09.45.200.<sup>2</sup> In determining whether the parties agreed to limit the creditor's remedies, the note and trust deed are construed together and interpreted to carry out the reasonable expectations of the parties. \_\_ P.2d at \_\_, Op. No. 3274 at 7.

The deed of trust note here in issue states that Counsellors "promise(s) to pay" the Conrads the loan amount. In the event of default, the Conrads may at once declare the entire debt due and payable. The note does not indicate that

---

2. AS 09.45.200 provides:

During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in AS 09.45.170, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

Counsellors is not liable for payment; therefore, the Conrads are entitled to sue on the note or foreclose judicially unless the deed of trust provides otherwise.

Counsellors argue that Paragraph B6 of the deed of trust limits the Conrads' remedy to nonjudicial foreclosure:

Upon default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of the Beneficiary. In the event of default Beneficiary shall execute or cause the Trustee to execute a written notice of such default and of his election to cause to be sold the herein described property to satisfy the obligation hereof, and shall cause such notice to be recorded in the office of the recorder of each recording precinct wherein said real property of [sic] some part thereof is situated.

(Emphasis added). Counsellors reasons that the language "Beneficiary shall execute" must be construed as a limitation on the Conrads' right to do anything else.<sup>3</sup> However, we believe that the only logical interpretation of this language requires the Conrads to execute the notice only after they have "elected" the remedy of nonjudicial foreclosure. The Conrads are entitled to exercise any other remedies permitted by law.

We conclude that the deed of trust does not limit the Conrads to the remedy of nonjudicial foreclosure. The trust deed

---

3. See Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978) ("Unless the context otherwise indicates, the use of the word 'shall' denotes a mandatory intent.")

does not expressly preclude a suit on the note. The fact that a creditor may foreclose nonjudicially does not imply that it may not foreclose judicially.<sup>4</sup> Because the Conrads' remedies were not expressly waived in the note or deed of trust, they had the right to sue on the note or foreclose the security. Therefore, the superior court erred as a matter of law when it entered summary judgment against the Conrads on their right to sue on the note.<sup>5</sup>

---

4. AS 34.20.070(a) provides in part:

If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court,  
...

(Emphasis added).

5. The superior court appeared concerned that the Conrads filed suit on the note without providing Counsellors any notice of default. Paragraph B6 of the deed of trust requires the Conrads to record a notice of default as one of the steps leading to nonjudicial foreclosure. However, no notice is required if the Conrads pursue one of the other remedies available to them as secured creditors. See Smith v. Certified Realty, 585 P.2d 293, 294 (Colo. App. 1978), aff'd, 575 P.2d 1043 (Colo. 1979) (debtor has no equitable right to cure default in an action brought solely on a promissory note).



III. CONRAD II: IS THE CREDITORS' CLAIM FOR JUDICIAL FORECLOSURE PRECLUDED BY THE PRIOR SUIT ON THE NOTE?

Counsellors argues that the Conrads' claim for judicial foreclosure is precluded by the judgment on the note. The Conrads contend that judicial foreclosure was not addressed in Conrad I.

We described the claim preclusive effect of a prior judgment in State v. Smith, 720 P.2d 40, 41 (Alaska 1986), as follows:

Under the doctrine of res judicata (claim preclusion), a judgment on the merits of a controversy bars subsequent suits between the same parties asserting the same claim for relief when the matter raised was or could have been decided in the first suit. Pankratz v. State, Department of Highways, 652 P.2d 68, 74 (Alaska 1982); Calhoun v. Greening, 636 P.2d 69, 71-72 (Alaska 1981). The Restatement (Second) of Judgments § 24(a) (1982) states that the claim extinguished by the first judgment:

includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

A mere change in the legal theory asserted will not avoid the preclusive effect of the first judgment. Pankratz, 652 P.2d at 74.

Arguably, Conrad II is barred under this reasoning. Conrad I involved the same parties and resulted in a judgment on the merits. The Conrads could have joined a claim for judicial

foreclosure with their claim for judgment on the note. Thus, it is irrelevant whether the Conrad I court ruled on this issue.<sup>6</sup>

On the other hand, the common law permits a creditor to judicially foreclose a security following an action on the note. E.g., Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg., 393 P.2d 749, 751 (Colo. 1964); Berg v. Liberty Fed. Sav. & Loan Ass'n, 428 A.2d 347, 348-49 (Del. 1981); Klondike, Inc. v. Blair, 211 So. 2d 41, 42-43 (Fla. App. 1968). Moreover, AS 09.45.200 permits an action for judicial foreclosure "after the pendency of an action for the recovery of a [secured] debt," provided that the creditor prevails in the prior action and its judgment remains unsatisfied in whole or in part.<sup>7</sup>

We believe that this situation is best viewed as an express statutory exception to general principles of res judicata. A creditor need not join its claim for judicial foreclosure in the suit for recovery on the note at the risk of losing its security. In one sense, the subsequent foreclosure may be considered a special form of execution on the prior

---

6. To the extent that Counsellors argues that this issue is precluded by Conrad I, it is relevant whether the first court ruled on the judicial foreclosure question. We agree with the Conrads that the superior court did not rule that the Conrads are limited to nonjudicial foreclosure; despite Counsellors' best efforts to obtain a decision on this question, the court left it unresolved.

7. See AS 09.45.200, supra note 2.

judgment for the creditor. Under AS 09.45.200, the creditor may bring these claims consecutively.<sup>8</sup>

The decision of the superior court in File No. S-1996 is REVERSED: the decision in File No. S-2102 is AFFIRMED. The cases are REMANDED to the superior court for further proceedings. The Conrads may elect whether to proceed with the suit on the note or the foreclosure.

---

8. However, when the creditor resorts first to judicial foreclosure, failure to join its claim for a deficiency judgment may result in claim preclusion. See AS 09.45.170; see also Darnell v. Denton, 669 P.2d 981, 983 (Ariz. App. 1983); but see Perpetual Bldg. & Loan Ass'n v. Braun, 242 S.E.2d 407 (S.C. 1978).



NOTICE: This opinion is subject to formal correction before publication in the Pacific Reporter. Readers are requested to bring typographical or other formal errors to the attention of the Clerk of the Appellate Courts, 303 K Street, Anchorage, Alaska 99501, in order that corrections may be made prior to permanent publication.

THE SUPREME COURT OF THE STATE OF ALASKA

HAROLD J. MOENING and  
COLLEEN M. MOENING,

Appellants,

v.

ALASKA MUTUAL BANK,

Appellee.

File No. S-1980

O P I N I O N

[No. 3274 - February 26, 1988]

Appeal from the Superior Court of the State  
of Alaska, Third Judicial District, Anchorage,  
Milton M. Souter, Judge.

Appearances: Francis J. Nosek, Jr. and Kelly  
Fisher, Anchorage, for Appellants. Gordon F.  
Schadt and Milford H. Knutson, Anchorage, for  
Appellee.

Before: Matthews, Chief Justice, Rabinowitz,  
Compton, and Moore, Justices. [Burke,  
Justice, not participating.]

COMPTON, Justice.

This appeal presents three questions. The first question is whether a secured creditor initially may ignore the security and sue for a personal judgment on the underlying debt, absent an agreement to the contrary. The second is whether the creditor agreed to limit its remedy to foreclosure of the security. The third is whether the suit on the debt extinguishes the security as a matter of law..

#### I. FACTUAL AND PROCEDURAL BACKGROUND

Harold Moening and Ronald Rivard became business associates in 1983. Prior to their association, Rivard was the sole shareholder of Quest Enterprises, Inc. (Quest). Moening agreed to guarantee Quest's debts to Alaska Mutual Bank (AMB) in exchange for a 40% interest in the business.<sup>1</sup>

To effectuate the guarantee, Moening executed a \$700,000 deed of trust note in favor of AMB.<sup>2</sup> The note was secured by a deed of trust on Moening's home, and on the property which originally secured the Quest obligations extinguished by the consolidation. Moening defaulted. Later Moening executed a secured promissory note for \$33,000 to guarantee the debt for

---

1. Colleen Moening is a named defendant because she co-signed many of the obligations with her husband Harold Moening.

2. The principal was payable on demand in a single installment. Absent a demand, the note was due on May 7, 1985.

property purchased by Quest in Peters Creek.<sup>3</sup> Moening defaulted on this note as well.

AMB filed a complaint against Moening seeking a personal judgment on the notes. It did not foreclose the deeds of trust nor attempt to exercise the power of sale. The superior court entered summary judgment for AMB, concluding that AMB had the right initially to ignore its security and sue on the note. The court entered a money judgment for \$733,000 in principal due on the notes, plus accrued interest, costs, and attorney's fees. In addition, the court ordered that the notes should be filed with the court, marked "Conditionally Cancelled" and, "if subsequent execution on the judgment does not satisfy it, the amount by which it is not satisfied may form the basis of judicial or non-judicial foreclosure of the collateral securing the promissory notes."

Moening appeals on the grounds that (1) as a matter of law, AMB must exhaust the security first; (2) AMB agreed to exhaust the security first; and (3) AMB waived its security by suing on the notes.<sup>4</sup> For the reasons hereinafter set forth, we affirm the judgment of the superior court.

---

3. The note was secured by a deed of trust identical to that securing the \$700,000 note. The trust deed is not part of the record.

4. Moening also argues that AMB failed to join indispensable parties (Rivard and Quest). Alaska R. Civ. P. 19(b). This is an action to collect a debt. Neither Rivard nor

(Footnote Continued)



## II. THE RIGHTS OF A SECURED CREDITOR

Moening argues that a secured creditor may not ignore the security and sue on the underlying obligation; it must first exhaust the security. AMB contends that a secured creditor has the option to foreclose or sue on the note, and that it may pursue these remedies concurrently or consecutively.

Statutes provide a secured creditor with a variety of remedies when the debtor defaults. For example, the creditor may bring an action for judicial foreclosure. AS 09.45.170.<sup>5</sup> The creditor is then entitled to a deficiency judgment against the debtor. Id.; Smith v. Shortall, 732 P.2d 548, 549 (Alaska 1987); Suber v. Alaska State Bond Comm., 414 P.2d 546, 555-56 (Alaska

---

(Footnote Continued)

Quest was a party to the note and neither has an interest in this lawsuit. Civil Rule 19(a)(2). Moreover, their absence does not preclude granting complete relief between Moening and AMB. Civil Rule 19(a)(1). The fact that Moening may have claims against Rivard arising from other agreements, or that Rivard and Quest may have interests of record in the security, does not render them indispensable to AMB's suit on the note.

5. AS 09.45.170 provides:

A person having a lien upon real property, other than that of a judgment, whether created by mortgage or otherwise, to secure a debt or other obligation may bring an action to foreclose the lien. In the action, the court may direct the sale of the encumbered property or a portion of it and the application of the proceeds of the sale to the payment of costs, expenses of sale, and the amount due the plaintiff. The judgment shall also determine the personal liability of a defendant for the payment of the debt secured by the lien and be entered accordingly.

*Similar to  
deficiency*

1966). The debtor has a statutory right of redemption for twelve months after the sale is confirmed. AS 09.45.190, 09.35.250.

The creditor may elect to conduct a nonjudicial foreclosure sale if the deed of trust provides for this remedy. Suber, 414 P.2d at 555-56; AS 34.20.070(a).<sup>6</sup> The creditor is not entitled to a deficiency judgment following a nonjudicial foreclosure. Smith, 732 P.2d at 549; AS 34.20.100.<sup>7</sup> The debtor is not entitled to redeem the property, unless the deed of trust provides otherwise. AS 34.20.090(a).

---

6. AS 34.20.070(a) provides in part:

If a deed of trust is executed conveying real property located in the state to a trustee as security for the payment of an indebtedness and the deed provides that in case of default or noncompliance with the terms of the trust, the trustee may sell the property for condition broken, the trustee, in addition to the right of foreclosure and sale, may execute the trust by sale of the property, upon the conditions and in the manner set forth in the deed of trust, without first securing a decree of foreclosure and order of sale from the court  
.....

(Emphasis added).

7. AS 34.20.100 provides:

When a sale is made by a trustee under a deed of trust, as authorized by AS 34.20.070 -- 34.20.130, no other or further action or proceeding may be taken nor judgment entered against the maker or the surety or guarantor of the maker, on the obligation secured by the deed of trust for a deficiency.

Statutes also refer to an action on the underlying obligation. Alaska Statute 09.45.200 provides:

During or after the pendency of an action for the recovery of a debt secured by a lien mentioned in AS 09.45.170, an action cannot be maintained for the foreclosure of the lien unless judgment is given in that action that the plaintiff recover the debt or a part of it, and an execution issued in the action against the property of the defendant is returned unsatisfied in whole or in part.

The clear implication of this section is that the creditor may sue directly on the note without first foreclosing the property. Moreover, if the creditor prevails in the legal action and cannot satisfy the judgment against the debtor's personal property, it may then maintain an action for judicial foreclosure of the security.

The superior court order also permits AMB to foreclose nonjudicially if the judgment on the note is returned unsatisfied. Moening argues that, even if AMB initially may ignore the security, it may not foreclose nonjudicially after obtaining a judgment on the note.

The anti-deficiency statute prohibits a deficiency judgment following exercise of a power of sale; however, it does not preclude the exercise of a power of sale following a judgment on the note. AS 34.20.100, supra note 7. Under the common law, a prior suit on the note does not preclude subsequent judicial or nonjudicial foreclosure of the security. Foothills Holding Corp. v. Tulsa Rig, Reel & Mfg., 393 P.2d 749, 751 (Colo. 1964); Berg

*Common law.*



v. Liberty Fed. Savings & Loan, 428 A.2d 347, 348-49 (Del. 1981); Klondike, Inc. v. Blair, 211 So. 2d 41, 42-43 (Fla. App. 1968). The doctrine of election of remedies does not apply, because foreclosure and a suit on the note are not inconsistent remedies. Klondike, 211 So. 2d at 42; Norwood Realty v. First Fed. Savings & Loan, 109 S.E. 2d 844 (Ga. App. 1954); Skach v. Lydon, 306 N.E. 2d 482, 485 (Ill. App. 1973). See also 55 Am. Jur. 2d Mortgages § 543, at 523 (1971).

We conclude that the statutes permit a secured creditor initially to ignore the security and sue on the note. Once the creditor obtains a personal judgment which is returned unsatisfied in whole or in part, the creditor may judicially or nonjudicially foreclose the security.<sup>8</sup>

---

8. In Smith v. Shortall, 732 P.2d at 549, we held that a spouse who nonjudicially foreclosed a deed of trust securing her former husband's property division obligation was not entitled to a deficiency judgment under AS 34.20.100. In dicta we stated:

The obligation was evidenced by a promissory note and secured by a deed of trust. When [Debtor] defaulted on the obligation, [Creditor] had several options. She could have waived the security of the deed of trust and sued on the note. Or, she could have brought an action to judicially foreclose the deed of trust, retaining the right to recover a deficiency judgment. AS 09.45.170; Suber v. Alaska State Bond Committee, 414 P.2d 546, 555 (Alaska 1966). Instead, [Creditor] elected the remedy of non-judicial foreclosure. By electing this remedy, [Creditor] lost her right to recover a deficiency judgment against [Debtor].

(Footnote Continued)

### III. THE PARTIES' AGREEMENT

When a note is executed and secured by a deed of trust, the documents are read and construed together as one contract to ascertain the parties' intent. In re Sutton Inv., 266 S.E.2d 686, 689 (N.C. App. 1980), rev. denied, 301 N.C. 90 (1980); Herrington v. Murphy, 446 P.2d 595, 597 (Okla. 1968). The contract is interpreted to give effect to the reasonable expectations of the parties, looking to the language of the contract, the circumstances surrounding its adoption, and case law interpreting similar agreements. Craig Taylor Equip. v. Pettibone Corp., 659 P.2d 594, 597 (Alaska 1983). Ambiguities are construed in favor of the debtor. Patton v. First Fed. Sav. & Loan Ass'n, 578 P.2d 152, 156 (Ariz. 1978).

Any agreement between the parties that the creditor will not seek a deficiency judgment and will look only to the security is enforceable. Stern v. Itkin Bros., 385 N.Y.S.2d 753, 754 (N.Y. Sup. 1975).<sup>9</sup> Such an agreement is enforced even when the security is destroyed by foreclosure of a superior lien. The

---

(Footnote Continued)

Id. We disapprove of this dicta insofar as it suggests that a suit on the note constitutes a legal waiver of the security.

9. A rider to the Stern mortgage provided in part:

On default hereunder, no deficiency judgment shall be sought, rendered or entered against the mortgagor and mortgagees will look only to the mortgaged premises.

formerly secured inferior creditor is not entitled to sue on the note. Laclede Inv. Corp. v. Kaiser, 596 S.W.2d 36, 39 (Mo. App. 1980).<sup>10</sup>

The \$700,000 obligation was evidenced by a "deed of trust note." By its terms, Moening expressly promised to pay principal and interest. The note also stated:

[E]very party signing . . . this note hereby . . . binds himself thereon as a principal, . . . and promises, if this note is not timely paid and is placed in the hands of an attorney for collection, or suit is brought hereon, to pay all costs of collection, including reasonable attorney's fees.

(Emphasis added). The note constitutes a personal obligation of Moening. It does not preclude AMB from suing directly on the note.

The \$33,000 debt is evidenced by a "single payment promissory note" in which Moening expressly promised to pay principal and interest. In case of default, Moening agreed to pay AMB's collection costs and attorney's fees. It does not limit AMB's ability to sue Moening.

---

10. The Kaiser note contained the following provision:

No personal liability shall be asserted or be enforceable against the maker, it being intended that the sole remedy of the holder hereof be by the foreclosure of the Deed of Trust and Security Agreement . . . .

596 S.W.2d at 39 n.1.



The deeds of trust securing the loans contain a power of sale provision permitting nonjudicial foreclosure. The trust deeds also expressly allow judicial foreclosure.<sup>11</sup> They do not limit the creditor's right to ignore the security and sue on the note.

#### IV. CANCELLING THE NOTES AND TRUST DEEDS

When AMB submitted a proposed judgment on the notes, Moening objected because the judgment did not include an order cancelling the notes and deeds of trust under Civil Rule 78(d).<sup>12</sup> AMB submitted the original notes to the court, but did not submit the trust deeds. AMB requested that the notes not be cancelled in case the personal judgment was returned unsatisfied. The superior court ordered that the notes be marked "Conditionally

---

11. The trust deed states in part:

In the event that this Deed of Trust is foreclosed as a mortgage and said property sold as a foreclosure sale [the purchasers may make necessary repairs or alterations] .  
...

12. Alaska R. Civ. P. 78(d) provides:

In all cases in which a judgment upon a written instrument is entered, such instrument shall be filed with the court, and unless the court otherwise orders, it shall be cancelled by marks and writing upon its face. The clerk shall retain the same in the files unless otherwise directed by the court.

Cancelled." Moening argues that the superior court erred by failing to unconditionally cancel the notes and trust deeds, entering the order without adequate briefing, and entering the order after the notice of appeal was filed.

When judgment is entered on a written instrument, the instrument shall be filed with the court and cancelled on its face, unless the court orders otherwise. Civil Rule 78(d). We perceive no reason why a secured note should not be subject to this general rule. The note merges with the judgment, and any further proceedings will be to enforce the judgment rather than the note.

In contrast, the deeds of trust should neither be filed with the court nor cancelled:

[A] judgment recovered upon a debt secured by a mortgage does not merge the mortgage nor operate as a discharge, abandonment, or release of the mortgage security.

. . . The mortgage continues to secure such debt and is not released, discharged, or satisfied by a judgment on the debt, note, or bond. Such judgment stands subordinate to the mortgage lien.

Silver v. Williams, 175 A.2d 673, 676 (N.J. Super. Ct. Ch. Div. 1961) (emphasis in original), rev'd on other grounds, 178 A.2d 649 (N.J. Super. Ct. App. Div. 1962). In essence, the creditor ends up with a secured judgment.

Although the superior court could have simply cancelled the notes, it had discretion under the rule to order otherwise.

The conditional cancellation order does not constitute an abuse of that discretion.<sup>13</sup>

AFFIRMED.

---

13. The record does not support Moening's assertion that the conditional cancellation order was entered after Moening filed a notice of appeal. The order was entered on January 7. The notice of appeal contains an initial filing stamp of December 19; however, that stamp was cancelled and the notice shows a second stamped filing date of January 7.