

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 8672

1563 SCOMM 59: JNT. COMMITTEE ON ECONOMIC RECOVERY, 1988

1360

1 IN THE SENATE

BY KELLY AND STURGULEWSKI

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SENATE BILL NO. 408

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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* 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.

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(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.

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(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.

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 This Act is repealed July 1, 1992.

* 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

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SENATE BILL NO. 409

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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FIFTEENTH LEGISLATURE - SECOND SESSION

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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.
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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

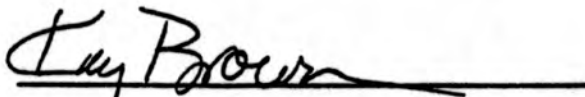
project costs exclusive of federal relocation assistance funds, once verified and funded, be spelled out in a memorandum of understanding between the state and local government by the Alaska State Building Authority subject to the conditions for appropriation the Legislature deems advisable.

Signed this 2nd day of March, 1988



Representative Max Gruenberg

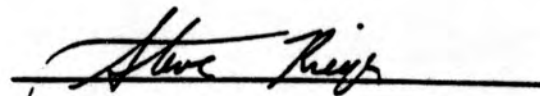
Chairman, House Joint Economic Recovery Committee



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
1986 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: 03/03/86

Approved by Commissioner: Hugh Malone Date: 03/03/86
Agency: Department of Revenue

Distribution (by preparer):

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

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

1 IN THE HOUSE

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.
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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).

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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
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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
Pakht
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:

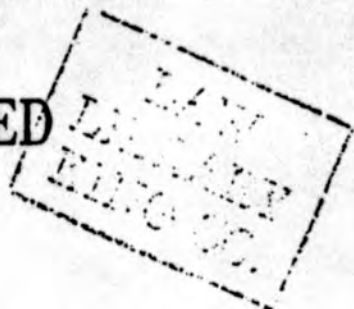
"* Sec. 10. AS 09.38.055 is amended to read:

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

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, sube relettered as subse graph 8, subdivisio bered as paragraph was relettered as s

Cross References

Garnishment, m accounts, withholdi § 12-1578.

## § 33-1130. Too professio

The following business or profi

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).

ALASKA DELEGATION 90  
(4) L. J. C. FIN

# 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 Bureau of the State~~.

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  $10\frac{1}{2}$  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

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:

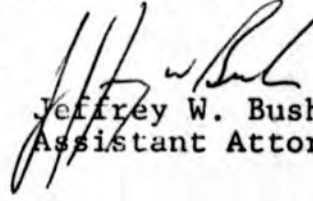
From line 14, after "organizations from any" delete the rest of that line and all of line 15 and insert "fees, authorization, permits, filings, or registrations of the department for conducting transactions authorized under this chapter."

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.

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.  
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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 and

15 (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.  
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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.  
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