

ALASKA LEGISLATIVE COMMITTEE ON THE LEGISLATIVE PROCESS

1615 HJ HB 409. - HB 428

protects only citizens. Similarly, a law that discriminated against non-resident American citizens by restricting or prohibiting them from sport hunting might arguably withstand a privileges and immunities challenge on the grounds that sport hunting, unlike commercial fishing, is not a right of citizenship to be protected, but is merely a privilege.

The test applied by the U.S. Supreme Court to determine whether a law that discriminates against non-residents violates the privileges and immunities clause was set out in Toomer v. Witsell, 334 U.S. 385 (1948). The court there struck down a South Carolina shrimp fishing law that charged non-residents one hundred times the resident license fee for shrimping in its three-mile coastal waters. The court distinguished its earlier decision, McCready v. Virginia, 94 U.S. 391 (1876), (which had upheld a law allowing Virginia citizens only to plant oysters in state tidal waters) on the grounds that McCready involved non-migratory fish in inland waters and that it was based on an outdated "ownership" theory of fish game. The court then held that the ability to engage in commercial fishing is a right protected by the privileges and immunities clause, and that no law may discriminate against non-citizens (of the state) unless "there is something to indicate that non-citizens constitute a peculiar source of the evil at which the statute is aimed", Toomer, supra at 398.

In a subsequent case, the U.S. Supreme Court addressed a similar privileges and immunities challenge to a Montana law that charged non-residents a higher hunting license fee. The court in Baldwin v. State Fish and Game Commissioner, ___ U.S. ___, 98 S.Ct. 1852 (1978) upheld the scheme, on the ground that the privileges and immunities clause does not encompass recreational sport hunting:

Some distinctions between residents and non-residents merely reflect the fact that this is a Nation composed of individual States, and are permitted; other distinctions are prohibited because they hinder the formation, the purpose, or the development of a single union of those states. Only with respect to those "privileges" and "immunities" bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and non-resident, equally.... Equality in access to Montana elk is not basic to the maintenance or well-being of the Union. ___ U.S. ___, 98 S.Ct. at 1861-62.

Thus the initial test for a privileges and immunities challenge is whether the law affects a right to engage in a livelihood or whether the activity is merely recreational and a sport. If the latter, a privileges and immunities challenge will not prevail.

(2) Equal Protection Under 14th Amendment.

State laws that discriminate against aliens or non-residents must withstand a different test when challenged under the "equal protection" clause of the 14th Amendment.

First, the court must determine whether the class discriminated against is "inherently suspect" or if the law affects a "fundamental right." If so, the court will "strictly scrutinize" the intent and purpose of the law to establish whether there is a "compelling state interest" that necessitates the law and that the law is the least drastic means to further that interest. Dunn v. Blumstein, 405 U.S. 330 (1972). If the classification is not "suspect," and the right not "fundamental" the court will restrict its review of the law to a determination whether the law and the classification it establishes is "rationally related to a permissible state interest."

The court in Baldwin, supra, at 1862 concluded that recreational hunting was not a "fundamental right" (for purposes of privileges and immunities analysis which protects a longer list of rights than does the equal protection clause. (Hicklin v. Orbeck, 565 P.2d 159, 168 n.16 (Alaska 1977), rev'd on other grounds U.S., 57 L.Ed.2d 397 (1978)). However, the class of aliens (regardless of residency) has been held to be a suspect class for state laws, though not federal laws. Mathews v. Diaz, 426 U.S. 67 (1976), Sugarman v. Dougall, 413 U.S. 634 (1973) (civil service); Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948) (commercial fishing); Frovlov v. Delo, 383 N.Y.S. 2d 470 (N.Y. 1976) (hunting license). Thus, in order to uphold a law that discriminated between resident citizens and resident aliens, the state would have to show that distinguishing the class of aliens was necessary to further a compelling state interest. Frovlov, supra, at 472; Takahashi, supra at 416-17. A classification based solely on alienage must thus correspond to the class from which an "evil" is to be feared. Patsone v. Commonwealth of Pennsylvania, 232 U.S. 138 (1914) (upholding a state law prohibiting aliens from killing game for sport and to that end making possession of shotguns by aliens unlawful).

It may thus be more difficult to demonstrate that a law directed at aliens only is directed at the primary source of the problem. The court in Takahashi, supra at 419 held:

The protection of this section [8 U.S.C. § 41 relating to rights of all persons under U.S. Jurisdiction] has been held to extend to aliens as well as to citizens. Consequently the section and the Fourteenth Amendment on which it rests in part protect "all persons" against state legislation bearing unequally upon them either because of alienage or color.... The Fourteenth Amendment and the laws adopted under its authority thus embody a general policy that all persons lawfully in this country shall abide "in any state" on an equality of legal privileges with all citizens under non-discriminatory laws. [Footnotes omitted.]

The court concluded that the power of a state to apply its laws exclusively to alien inhabitants is "confined within narrow limits." Takahashi, supra at 420.

Applying this language to an Alaska law that would bar aliens from hunting, or otherwise restrict their ability to engage in sport hunting, its validity would depend in part on whether the privilege of sport hunting is encompassed by the privileges citizens can also enjoy. Arguably, sport hunting is not such a privilege enjoyed by all citizens, but is a special privilege that may be restricted to state citizens in order to protect the resource. In Patsone v. Pennsylvania, 232 U.S. 138 (1914) (cited in Takahashi, supra at 410) the Supreme Court sustained, against Fourteenth Amendment due process and equal protection challenges, a state law barring aliens from hunting wild game in the interest of conserving game for citizens of the state. The distinction between the Patsone and Takahashi cases apparently was that in Patsone the court found no conflicting federal law or treaty, that the privilege of taking wild game was not a right of citizenship, and a state could keep game for its own citizens. (Citing Geer v. Connecticut, 161 U.S. 519 (1896)).

Takahashi, suggests that to earn a living by fishing is a right of citizenship, and that:

To whatever extent the fish in the three-mile belt off California may be capable of ownership by California, we think that "ownership" is inadequate to justify California in excluding any or all aliens who are lawful residents of the state from making a living by fishing in the ocean off its shores while permitting all others to do so.

Based on the Takahashi case, it appears that a law directed at non-residents, rather than aliens (whether resident or non-resident), would be easier to justify.

Earlier analysis used to uphold state laws directed at non-residents (citizen or alien) relied on the theory of "state ownership" of fish and game resources. In re Eberle, 98 F. 295 (7th Cir. 1899) (upholding state law charging non-residents a much higher hunting license fee); State v. Tower, 24 A. 898 (Me. 1892) (upholding a state law forbidding non-residents from hunting in the state).

The "state ownership" theory is that the wild game (and fish) in a state is the property of the state under its sovereign ownership." Patson v. Pennsylvania, 232 U.S. 138 (1914) (no resident aliens may hunt deer); McCready v. Virginia, 94 U.S. 391 (1877) (state title to oysters in tide waters). This analysis has, in recent years, been severely eroded, although not overruled. Fish that migrate have been deemed not the state's property, Toomer v. Witsell, 334 U.S. 385 (1948) and state laws prohibiting aliens from commercial fishing in territorial waters, when the aliens held a federal gear license, have been stricken. Douglas v. Seacoast Products, Inc., 431 U.S. 265 (1977). Although the ownership theory has been deemed "but a fiction," Toomer v. Witsell, 334 U.S. 385, 402 (1948), and a "slender reed," Missouri v. Holland, 252 U.S. 416, (1920), nevertheless it has not been overruled.

Very
Important
← *

Courts today have, however, tended to replace "ownership" concepts with the principle that under a state's police powers, the state is trustee of the fish and game within its borders and may take reasonable measures to protect and manage it. Baldwin, supra at 1864 (Burger concur.); State v. Kemp, 44 N.W.2d 214 (S.D. 1950), dism'd 340 U.S. 923 (1951) (U.S. S.Ct. dism'd for want of "substantial federal question" a South Dakota law excluding non-resident from hunting migratory waterfowl.)

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Re: Alien Non-Guided Hunts

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Alaska's supreme court has taken a similar approach to protection of its natural resources. The court in Hicklin v. Orbeck, 565 P.2d 159 (Alaska 1977) struck down the durational (one year) residency requirement for pipeline jobs, on the grounds that, under equal protection analysis, a "fundamental right" (travel or migration) was infringed upon and the law must be strictly scrutinized; however the court also upheld a non-durational residency provision, claiming the right to work is not a fundamental right, and therefore the law must merely "bear a fair and substantial relation to a permissible state interest." Hicklin, supra at 167. The court relied on McCready v. Virginia, 94 U.S. 391 (1877) and the Alaska Constitution Art. VIII § 2, that holds Alaska's natural resources for the benefit of her people, to conclude that the natural resources of the state "belong" to Alaskans "in a way that, in our federal system, Alaska's society and economy in general do not." Hicklin, supra, at 169. The United States Supreme Court reversed the state decision in Hicklin v. Orbeck, ___ U.S. ___, 57 L.Ed.2d 397 (1978), however, stating that Alaska's hire law violates the privileges and immunities clause because the state failed to show that non-residents are "a peculiar source of the evil" and because the Alaska hire preference does not bear a substantial relationship to the problem. The Supreme Court further held that the theory of state ownership of its resources does not remove a law concerning that resource from the prohibitions of the privileges and immunities clause. *

The analysis suggested by the above equal protection cases, assuming "strict scrutiny" is not used, is whether the state can present sufficient evidence that the discriminatory law is justified by problems that class creates. For example, the court in Balwin, supra found that residents contributed to the feeding of elk, that non-resident hunting pressure threatened the resource, and that the law was supportable on these and similar grounds. In contrast, the court in Gullaney v. Anderson, 342 U.S. 415 (1952) struck down a territorial fishing law that required aliens and non-residents to pay higher fishing license fees; the court found no evidence that the higher fee represented actual compensation to the state for a higher enforcement burden, but did not rule out the possibility that this could be a legitimate basis for discrimination. Thus the "rational basis" for the law was not established, and it failed constitutional scrutiny.

(3) Supremacy Clause: Art. VI § 2. Constitutional challenges to discriminatory state laws based on the supremacy clause fall into two categories: first, laws directed at

aliens that conflict with rights granted to aliens under federal laws or treaties; second, state laws that impinge upon a federally granted license or privilege. Both types of cases receive the analysis discussed by the court in Takahashi, supra: no law that conflicts with a treaty, or with a particular federal right or privilege, will survive U.S. Supreme Court scrutiny. Federal legislation pre-empts state law in fields that have been traditionally occupied by the states only where there is a manifest intent of Congress. This has been held to include federal vessel licenses to engage in fisheries. Douglas v. Seacoast Products, Inc., 524 ed.2d 204. See also, Kleppe v. New Mexico, 426 U.S. 529 (1976) which struck down a state wild burro law that "conflicted" with a federal law protecting the animals on federal lands.

Assuming there is no overriding federal law involved, a state could pass a discriminatory law if it is based on, and rationally related to, a valid state interest. Since the Baldwin court has concluded that sport hunting is not a fundamental right of citizenship, a sport hunting law aimed at restricting non-residents or aliens would probably survive a challenge under the supremacy clause.

(4) Commerce Clause; Art. I § 8. A state law that restricted access by non-residents or aliens to a resource and thereby detrimentally affected interstate commerce, could be struck down under the commerce clause. For example, the court in Douglas v. Seacoast Products, Inc., ___ U.S. ___, 52 L.Ed.2d 304 (1977) held that Congress had the power to regulate the taking of fish in state waters where there was some effect on interstate commerce. The court struck down a Virginia law that limited the right of non-residents and aliens to catch fish in territorial waters.

It is unlikely that this analysis would find a similar sport hunting law invalid, since the Baldwin court has held sport hunting to be a purely recreational activity, not a source of livelihood.

Summary. Whether Alaska could pass a constitutionally supportable law or regulation that restricted the ability of non-residents or aliens from taking game would depend on whether the state could gather enough evidence showing the need to protect this resource and showing that the non-residents or aliens were a special threat.

The evidence to look at includes: the higher tax burden borne by state residents, which taxes support game

management; the likelihood of enforcement problems generated by aliens or non-residents; the likelihood of non-residents or aliens not abiding by, or being familiar with, state game laws; dangers to non-residents and aliens unfamiliar with climate, terrain, wildlife habits [see attached article on point]; the need to limit the overall take of the species; protection of game and conservation purposes.

If the state simply charges a higher license fee to non-residents, the evidence to support this will be easy to supply. If only aliens are charged a higher fee, the burden will be much higher on the state. [The burden of proof is on the one who challenges the law, of course, but once the discrimination is established, the state must defend the classification.]

A second possibility for legislation would be to require all aliens to be accompanied by guides. If directed only at aliens and not non-resident citizens, it would be necessary to demonstrate that aliens present a different danger to the game (because of language barriers making it difficult to comprehend rules, training, allegiance to laws, culture, or other reasons).

The easier-to-justify approach would be to require all non-residents (aliens or citizens) to be accompanied by guides. The justification then would rest on: greater likelihood of violations due to unfamiliarity with laws; costs of enforcement and need to have the guide function as a person responsible for the legality of the hunt; danger to the non-resident who is not familiar with weather, terrain, and animals, and the likely cost to the state of aiding non-residents in distress.

One problem with the required guide approach is that as the law (AS 16.05.407) now stands guides are only required for brown bear, grizzly bear, polar bear and sheep. This makes it difficult to justify a guide requirement based on safety of the hunter, since it does not include goat, moose and other species that present as great or greater potential hazards to the hunter, in terms of terrain, weather, etc. Thus AS 16.05.407 would have to be expanded to include all species.

In State v. Jack, supra, the supreme court in Montana struck down a state law requiring guides for non-residents on national forest, wilderness or game refuge lands or state game refuges. The basis for the decision was that because the law did not apply to deer and antelope, it could not be based on legitimate safety needs, and therefore had no reasonable connection with the classification.

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In conclusion, although the Supreme Court has severely eroded a state's sovereign ownership of game, it has not ruled out the possibility of establishing a constitutionally sound law reserving sport hunting to resident citizens. In order to draft a supportable resident law or regulation, the state or state board must demonstrate clearly that the purpose of the discriminatory law is strictly related to valid biological interests, essential state management goals and similar unimpeachable motives and that the law does not conflict with established federal laws or treaties.

SEF:ln(bwb)

cc: Robert Hinman
Marcus Jensen
Ronald Skoog
Col. Wolstad
Bill Bellingar
Don Harris
Ron Somerville
John Gissberg

[A] person who is not a citizen of the United States, and who does not have a petition for naturalization pending before the district court.

An alien may be a resident alien or a non-resident alien, and may live legally in the United States even though he is not naturalized. Aliens living within the United States are granted certain protections (to make contracts, sue and be sued, be protected by law enforcement, etc.) and as a result they owe a temporary and local allegiance to the country in which they reside.

B. Basis of Challenge to Laws that Discriminate Against Aliens. Whether a law that discriminates against an alien will withstand constitutional scrutiny may depend on whether the alien is: (1) an alien not lawfully in the state; (2) a non-resident alien; or (3) a resident alien.

Probably a law prohibiting an alien not lawfully in the U.S. from taking fish and game would be upheld under a state's police powers. (See, e.g., AS 16.05.905, prohibiting aliens not lawfully admitted to the U.S. from engaging in commercial fishing or taking marine mammals in territorial waters.)

Laws or regulations that discriminate against a non-resident alien, a non-resident citizen, or a resident alien, are subject to attack under:

- (1) Article IV § 2 of the U.S. Constitution - privileges and immunities;
- (2) 14th Amendment of the U.S. Constitution - equal protection;
- (3) Article I § 8 of the U.S. Constitution - commerce clause; or
- (4) Article VI, U.S. Constitution - supremacy clause.

Analysis of the constitutionality of the law or regulation depends on which constitutional challenge is raised.

(1) Privileges and Immunities. A law or regulation aimed directly at aliens could not be overturned under the privileges and immunities clause, because that clause



BILL ANALYSIS

Department Public Safety	Sponsor (Principal) Hurlbert, Zharoff & Grussendorf	Bill Number HB 409
Department Position Support with amendment.		
Division Director Colonel Robert J. Stickles <i>RJS</i>	Date 2/22/81	Commissioner Commissioner William R. Nix <i>WRN</i>
		Date 2-25-82

Comments:

<input type="checkbox"/> Position Noted	By	Date
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SUMMARY

1. a) Related Bills (Similar or Conflicting) SB 302 HB 199	1. b) Other Agencies Affected by Bill Unknown
2. a) Organizational Support for Bill Unknown	2. b) Organizational Opposition to Bill Unknown

3. Program Effects of Bill
 Would require non-residents to have a guide or be guided by a relative for specific species. Would require non-resident aliens to have a guide or be guided by a resident for specific species.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:
 Amend HB 409 by adding black bear, (including the cinnamon and blue color phases) deer and mountain goat to the following: AS 16.05.407(d) line 24 or 25; Amend HB 409 by adding Class A guide to the following: AS 16.05.407(a) line 18 or 19; AS 16.05.407(d), line 26 or 27.

6. Comments:
 The above amendments are offered to clean up the bill in perceived enforcement problem areas. Under 16.05.407(a) and (d), non-residents or non-resident alien hunters would be required to have a guide's services to hunt or pursue the big game species mentioned under these specific sections. Without the inclusion of Class A guides there would be a legal question as to whether a non-resident or non-resident alien could legally hunt with a Class A guide under this bill.

 Big game species requiring a guide for non-resident aliens should also include black bear (including the cinnamon and blue color phases), deer and mountain goat under 16.05.407(d) of this bill.
 (Continued)

HB 409 Bill Analysis
2/22/82

Large numbers of German, Swedish and Belgium non-resident alien hunters are being placed in camps in areas such as Prince William Sound, the Brooks Range and the Alaska Peninsula by booking agents for the specific purpose of hunting black bear and other species that presently do not require a guide. This places the unsupervised alien hunter in habitat of other big game species covered under HB 409. Inclusion of black bear, deer and mountain goats under this bill would be advantageous to the Division of Fish and Wildlife Protection from an enforcement standpoint.

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. HB 409
 Title An Act Relating to Guiding and Providing and Effective Date
 Requested by Hurlbert, Zharof and Grussendorf Date 2/19/82

II. FISCAL DETAIL
 Agency Affected Department of Public Safety
 Program Category Affected NNRMEC
 BRU, Program, Or Subprogram(s) Affected Fish & Wildlife Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

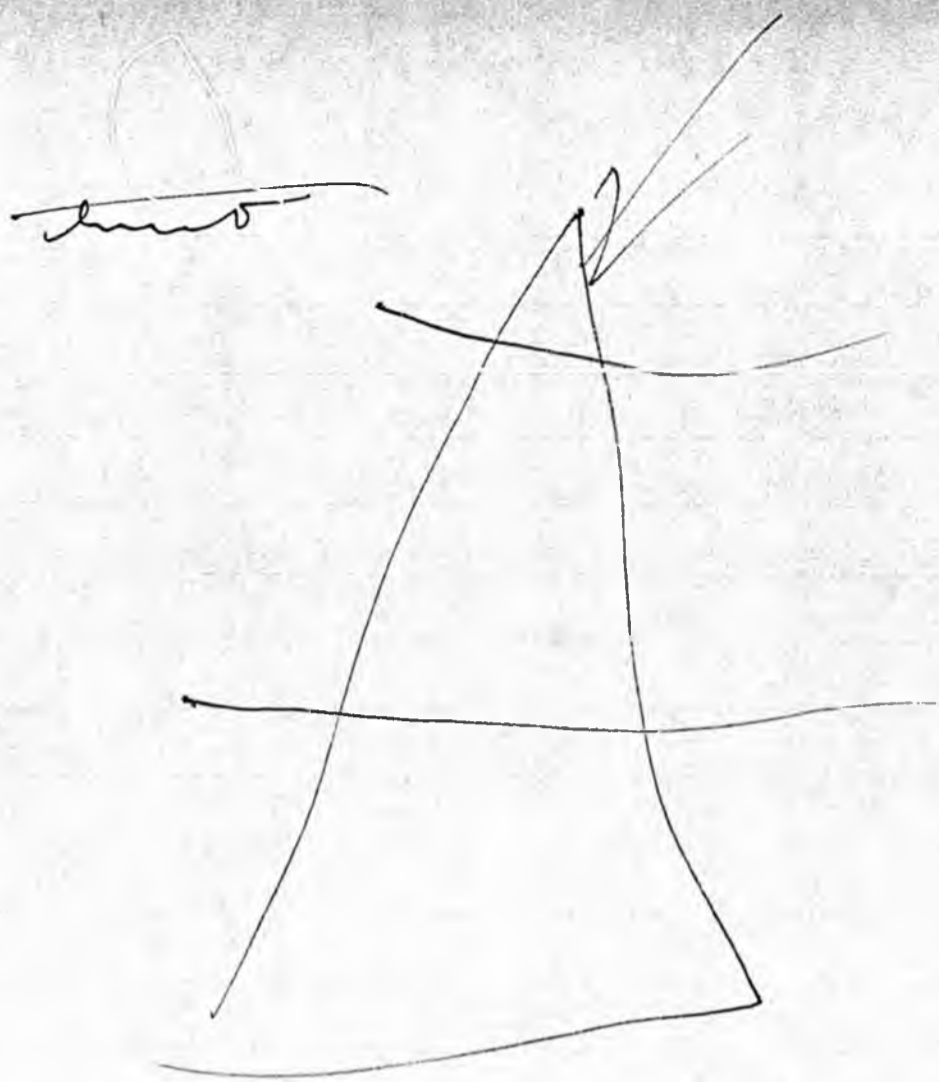
	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Source)						
	0	0	0	0	0	0

POSITIONS

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
FULL TIME						
PART TIME						
TEMPORARY						
	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE 2/19/82 PREPARED BY Colonel Robert J. Stickles
 AGENCY Department of Public Safety
 Original: Legislative Finance PHONE 269-5532
 cc: Budget and Management
 Prime Sponsor (First Legislator Named) (M)
 33-001 (Rev. 12/81)



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The "mystery picture" in last month's 'Journal' is salmon troller Frank Bifoss, of Meyers Chuck, Alaska. "The Old Man and the Sea" he was nicknamed by the trollers out of Hole in the Wall in the mid '70s, who'd see him fishing far off shore. "I can't tell you how many times I'd come over a swell and see him just like that," says one troller who identified the photo at once. The picture was taken off Meyers Chuck in 1977 on the last day of the silver season.

WINNERS: Gwen Emel, Ketchikan; Walter V. Pulju, Ketchikan; Paul Peterson, Ketchikan; Ed Glenz, Meyers Chuck; Robert Ezell, Ketchikan; David K. Olson, Meyers Chuck and Christina Settles.

[continued from previous page]

Mark I was in fact a success as far as we were concerned. It accomplished the objectives we set out to resolve. It gave us the information by which to fill the gaps we needed to fill. Yet, there is still one thing we cannot quite fully understand. That is, how can anyone consider even 70% a resounding success? We do not and have been told by Mr. Sato that he does not.

We are continuing to work on the development of the hair crab. We fully recognize that a tremendous amount of work must yet be done before we will be fully satisfied with our efforts. Yet, we believe that this specie of crab can be utilized and developed carefully.

In closing, we want to state that the success of the December trip was due entirely in part by skipper Sid Green and the crew of the Mark I. It was a tremendous pleasure to work with them.

Patrick Pletnikoff
President
Nika Corporation

CFAB is not a production credit assn.

To the editor: -

For some time now, Northwest Livestock PCA has been following the development of the Alaska Commercial Fishing and Agricultural Bank (CFAB) with great interest. In light of recent advertising that we have seen, as well as press releases, we can understand why the commercial banking industry in Alaska has not been too 'excited' about CFAB's

approach to their market development.

For our part, we feel that a few things should be clarified at this time with respect to the Farm Credit System in general—and specifically Northwest Livestock PCA's role in the Alaska banking industry. Since the inception of CFAB, the bank seems to have made a great effort at making references to their affiliation with the Farm Credit System.

This can hardly be seen as anything else than an attempt to benefit from the credibility and goodwill that the 63 years' history of the Farm Credit System has developed. This has been an effective approach, we will not deny, as we have had a number of prospective borrowers either imply or ask if CFAB is the same as our Association. Accordingly, we feel that it is proper at this time to point out that CFAB is not a PCA (Production Credit Association). With respect to their affiliation with the Bank of Co-ops, they are a borrower just like any other co-op eligible to borrow from that Bank.

The statement made by Gary Anderson about the Farm Credit System's availability in Alaska is ambiguous at best. He is technically correct when saying that the Farm Credit System has been available in the Lower 48 for 70 years (correct number of years is 63), but he very pointedly avoids mentioning that our Association has been financing also in the State of Alaska since 1969 and that our scope of financing was amended to include commercial fishing in 1972 concurrently with the Farm Credit Act passed in 1971.



Freshest in

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Alaska Fisherman's JOURNAL
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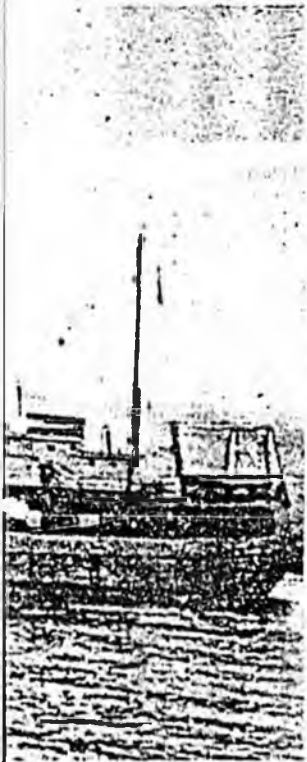
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- Fishing Vessel Owner
- Captain
- Crewman
- Dealer
- Other

Signature: _____

Alaska Fisherman News March 1981

PHOTO



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ust day of the silver season.

chikan; Walter V. Pulju,
chikan; Ed Glenz, Meyers
n; David K. Ottee, Meyers

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Since 1972 our volume in the area of commercial fishing vessel financing has been steadily building, and today we are financing a large number of fishing vessels of all sizes and from all over the State of Alaska. Our loan volume in Alaska has increased 140% and 121% in the past two years. Our credit standards are probably among the soundest in the industry, and we feel that this has served the industry well and most of our borrowers are supportive of this view.

Laws and regulations for Northwest Livestock PCA (and for other Associations as well) strictly prohibit advertising of interest rates; however, recent information gives us reason to believe that Gary Anderson's statement that "CFAB can offer fishermen the lowest rates commercially available" is just not true.

Our distant location in Portland, Oregon, has, from time to time, been viewed as a detriment. However, we feel that the borrower indirectly

benefits from this in the form of low operating costs which are, in turn, passed on to the borrower in the form of lower interest rates. This is not a concept specific for our Association but is shared by other Associations who finance fishing and agriculture in the Lower 48 states. Actually, we are as close as the borrower's nearest phone.

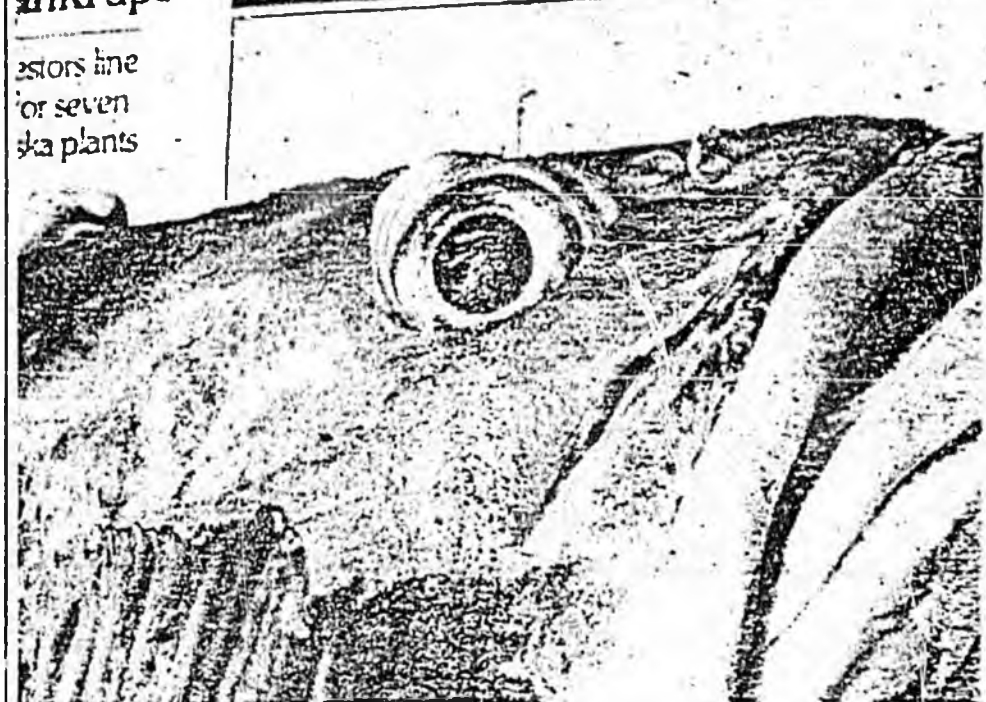
We are not about to pass judgment on the merit of creating CFAB in the present form or any other form. Generally our view is that in a free enterprise society, competition should not overshadow the fact that we are in business to provide a service to the borrower. All prospective borrowers, we feel, are well advised to look around. If these individuals are not able to prosper and grow, neither will we.

*Stein Setvik
Associate Loan Officer,
NW Livestock Production
Credit Association
Portland, Oregon*

FCO files
for Chapter 11

bankrupt

restors line
for seven
ska plants



THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. H B 413

Title An Act relating to the Alaska Commercial Fishing & Agriculture Bank

Requested by Rep. Brown Date 4/13/81

II. FISCAL DETAIL

Agency Affected Administration

Program Category Affected General Government

BRU, Program, or Subprogram(s) Affected Retirement

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL		-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill will result in no charge to the Retirement System. Employees of the Bank are now in PERS and all contributions are made by the Bank and its employees.

IV. DATE 4/13/81

PREPARED BY Ken Humphreys

AGENCY Administration

PHONE 465-4460

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

Rep. Gardiner

33-001 (Rev. 12/80) Keith Specking

Ken Humphreys *gc*

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 413

Title An Act Relating to the Alaska Commercial Fishing and Agriculture Bank

Requested by _____ Date 4/7/81

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development

Program Category Affected Public Protection

BRU, Program, or Subprogram(s) Affected Financial Institutions

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 4/7/81

PREPARED BY *Willis F. Kirkpatrick*
 AGENCY Dept. of Commerce & Economic Development
 PHONE 465-2521

Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)



UNITED FISHERMEN OF ALASKA

MAILING ADDRESS & OFFICE:

197 SOUTH FRANKLIN ST.
JUNEAU, ALASKA 99801
907 586-2820

Ernest Painter
Executive Director

Proposed amendment to House Bill 413 (An Act relating to the Commercial Fishing and Agriculture Bank; and providing for an effective date.)

Insert on line 2, page 6:

*Sec. 8. AS 44.81.210 POWERS OF THE BANK. (a)

(22) use Alaska limited entry permits as security for loans under (1) of this section for the repair, restoration or upgrading of existing vessels and gear, for the purchase of entry permits and gear, and for the construction and purchase of vessels. The provisions of AS ~~44.81.330-340~~ apply to Alaska limited entry permits pledged as security for loans in accordance with this section.

*Sec. 9. AS 44.81.080, 44.81.120, 44.81.130, 44.81.140, 44.81.150, 44.81.170, 44.81.180, and 44.81.220 are repealed.

*Sec. 10. This Act takes effect immediately in accordance with AS 01.10.070(c).

the bonds, and all assets, income and receipts pledged to pay or secure the payment of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. (§ 3 ch 159 SLA 1978)

Sec. 44.81.180. Bonds legal investments for fiduciaries. The bonds of the bank are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the bank are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized. (§ 3 ch 159 SLA 1978)

Sec. 44.81.190. Conflicts of interest. No member of the board of directors may vote on a transaction of the bank under this chapter if he is a party to the transaction. (§ 3 ch 159 SLA 1978)

Sec. 44.81.200. Reports and publications. The board of directors shall publish an annual report to the bank's shareholders. The report shall be made available to the public and shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the bank from each source during the period covered, a statement of the bank's investments, a description of the bank's investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions on the state's commercial fishing and agriculture industries, and any other information the board believes would be of interest to the governor, the legislature and the public. The board may also publish such other reports as it considers desirable to carry out its purposes. (§ 3 ch 159 SLA 1978)

Sec. 44.81.210. Powers of the bank. (a) The bank may

- (1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers and marketers, or to corporations, partnerships or joint ventures engaged in commercial agriculture or fishing, the majority interest of which is beneficially

owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank; however, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank.

(2) make and alter bylaws necessary or desirable to carry out its corporate functions;

(3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons;

(4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(5) adopt, alter, and use a corporate seal;

(6) sue and be sued in the name of the bank;

(7) issue bonds to carry out any of its corporate purposes and powers;

(8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;

(11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

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

(13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;

(14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;

(15) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

(16) provide technical services to members of the bank; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the member to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter;

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.81.230;

(21) indemnify a director, officer or employee of the bank and his heirs, executors and administrators against all liabilities and related expenses including, but not limited to, court costs and attorney fees, judgments, and the cost of reasonable settlements, incurred by him in connection with or arising out of an action or proceeding brought against him because of an act or omission in the performance of his official duties as director, officer or employee of the bank regardless of whether he is a director, officer or employee at the time the expenses or liabilities are incurred.

(b) The provisions of (a)(21) of this section do not authorize the bank to indemnify a director, officer or employee of the bank who is adjudged liable for negligence or misconduct in the performance of his official duties. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979; am §§ 7—10 ch 51 SLA 1980)

Effect of amendments. — The 1979 amendment added paragraph (20).

The 1980 amendments in paragraph (1) of subsection (a), inserted "suppliers" following "harvesters, processors" and deleted "primarily" following "or joint ventures" near the beginning and

substituted "member" for "shareholder" near the middle and near the end. The amendment also substituted "members of the bank" for "shareholders" and "member" for "shareholder" in paragraph (16) of subsection (a), added paragraph (21) of subsection (a), and added subsection (b).

Sec. 44.81.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under

From CFAB

SUMMARY OF A BILL CONCERNING THE
ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK
AND RELATING TO THE RELATIONSHIP OF THE BANK WITH THE STATE

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

Unfortunately, the founders of CFAB apparently also hoped to create an entity with the ability to raise capital by issuing tax-exempt bonds. Thus, they include many features in what is now AS 44.81 which are common and essential to legislative acts which create authorities of the State which are designed to raise capital in the tax-exempt market. Among such authorities in Alaska are the Alaska Industrial Development Authority, Alaska Municipal Bond Bank, the Alaska Housing Finance Corporation and the Alaska Power Authority. The effect of such "bonding" language has been confusion as to the status of CFAB. Is it an instrumentality of the State or a private cooperative institution? Recent events indicate that the distinction should now be made clear.

In any event, the State has never had the form of control over CFAB so that CFAB could be considered a "constituted

authority" as required by Section 103 of the Internal Revenue Code and the Treasury Regulations thereunder for the issuance of tax-exempt bonds. Little is, therefore, lost by removal of the language in AS 44.81 intended to assist the sale of CFAB bonds. This Bill, of course, retains all of CFAB's ability to raise capital by contracting other types of debt.

A section by section summary of the proposed legislation follows:

Section 1 of the Bill makes it clear that CFAB serves a public purpose (filling an unmet need in the state by providing capital to commercial fishermen and farmers so that Alaska's fishing and agriculture industries may develop), while removing language from AS 44.81.010(a) which seems to indicate that CFAB is some kind of an instrumentality of the State. Language added to AS 44.81.010(a) also makes it clear that CFAB is not engaged in "banking" as contemplated by the Alaska Banking Code as it seems clear that the Legislature intended that CFAB serve a different function than that of the commercial banks in the state. Regulation under the Alaska Banking Code would be inappropriate.

Section 2 clarifies the status of employees of CFAB. They are not employees of the State, but it does seem desirable, as with employees of many political subdivisions of the State, that CFAB employees be allowed to avail themselves of membership in the Public Employees Retirement System and the supplementary employee benefits on withdrawal from social security (to the extent that they may be eligible for the latter program).

Section 3 makes certain that members of the CFAB Board of Directors continue to be eligible for per diem and travel allowances.

Section 4 of the Bill amends AS 44.81.160, Pledge of the State, by removing a number of references to bonds and holders of bonds, while retaining the State's pledge to other creditors of CFAB that it will not take an action which might be considered to jeopardize the terms of a CFAB contract with that creditor.

Section 5 of the proposed Bill contains two housekeeping matters which are not necessarily connected with the purposes of the other amendments proposed in the Bill. The first of these is a change in terminology from "shareholders" to "members" which was overlooked in legislation passed by the Second Session of the Eleventh Legislature. The second change is an attempt to clarify the information which the Legislature expects will be contained in the annual report of CFAB. This change has been suggested by, among others, CFAB's independent outside auditors and as proposed uses language more appropriate to CFAB's activities.

Section 6 provides for confidentiality of CFAB's records while allowing for necessary disclosures to various agencies and government groups. It also provides for an audit of CFAB by the bank examiners. This is designed to provide for audit oversight at the State level.

Section 7 adds legislative findings necessary to establish intent and legislative history.

Section 8 repeals the several sections listed below:

Section AS 44.81.080 which classified CFAB employees in the exempt service.

AS 44.81.120, AS 44.81.130, AS 44.81.140, AS 44.81.150 which detailed the sale of tax-exempt bonds.

AS 44.81.170, AS 44.31.180 which classified CFAB as exempt from taxation and allows state agencies to purchase CFAB bonds.

AS 44.81.220 which provided that after repayment to the State CFAB would revert to the cooperative statutes. Removal of that will allow CFAB to continue to operate under this statute.

RE House Bill 413

"An Act relating to the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date."

Summary: HB 413 is sought to correct certain ambiguities in CFAB's originating legislation which make it both a private and a public corporation. The act allows it to be a private corporation while preserving oversight capabilities for the State.

CFAB cannot be both private and public. The constitutional rights of its private, risk-taking stockholders are conflictive with the public rights to access in a public body. As a public body, CFAB is severely impaired in its abilities to develop. Both the Farmers Home Administration and the SBA are constrained from dealing with the Cooperative and its principle funding source, the Farm Credit System, would be unable to continue. Additionally, various potential borrowers have expressed hesitancy to borrow from CFAB if their records are open to the public.

Section Description

*Section 1. The confusing wording describing CFAB as an instrumentality of the State and its operations as an essential government function are removed.

An exemption from the Alaskan Banking Code is added. This exemption is a housekeeping matter designed to assure CFAB's continuance after CFAB has repurchased all Class C stock from the State of Alaska.

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

As a lending institution only, and without deposit-taking abilities, many of the current banking laws do apply to CFAB. Most banking regulations are designed

to protect the depositor, either directly or through conservative assurance of a safe organization. CFAB meets the test of being a bank only so far as it makes loans.

*Section 2. CFAB employees are currently participants in PERS. One qualification for PERS participation is that the participating organization draw its powers from the Legislature, which CFAB does.

The section forestalls any troubles with PERS and protects the employees previous investments at no cost to the State.

*Section 3. This section clarifies the expense allowances for members of the Board. It allows compensation for actual expenses rather than fixed per diem. In most instances, this will result in savings to CFAB.

*Section 4. Extends the legislative assurance to all lenders to and participants with CFAB that its powers and capacity will not be detrimentally altered. This assurance is increasingly more important as CFAB expands its correspondent relationships and becomes involved in more complex transactions.

*Section 5. Amends the wording in three places. It changes the word shareholder to member, conforming to changes made in all but this section last year. It more importantly clarifies the reporting requirements of our annual report. These changes are upon the recommendation of our outside auditors, Price Waterhouse and Co. The requirement to report income from each source is deleted. Strict adherence to this sentence would require complete itemization of each interest payment. It is also felt that the Legislature is more interested in the disbursement of our loans by type, size, purpose, and geography than in our very limited investment activity. The requirement for investment information has been changed to loan activity.

*Section 6. Provides for confidentiality of CFAB's records while allowing for necessary disclosures to various agencies and government groups.

It also provides for an audit of CFAB by the bank examiners. This is designed to provide for audit oversight at the State level by an audit group experienced in looking at loan files.

*Section 7. Adds legislative findings necessary to establish intent and legislative history.

Original sponsor: Gardiner

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 413 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Commercial Fishing and
7 Agriculture ^{Co-Op} ~~Bank~~ and providing for an effective
8 date."

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

10 * Section 1. AS 44.81.010(a) is amended to read:

11 Sec. 44.81.010. ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK.

12 (a) There is established the Alaska Commercial Fishing and Agriculture
13 ^{Co-Op} ~~Bank~~. [THE BANK IS A PUBLIC CORPORATION AND GOVERNMENT INSTRUMENTALITY
14 IN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BUT HAS A LEGAL
15 EXISTENCE INDEPENDENT OF AND SEPARATE FROM THE STATE.] The exercise by
16 the bank of the powers conferred by this chapter is considered to be
17 for a public purpose [AN ESSENTIAL GOVERNMENTAL FUNCTION OF THE STATE].
18 Except as otherwise provided in this chapter, the bank is subject to
19 the provisions of AS 10.15.005 - 10.15.600. The bank is exempt from
20 the provisions of the Alaska Banking Code (AS 06.05) in the exercise
21 of powers granted by this chapter.

22 * Sec. 2. AS 44.81.070(c) is amended to read:

23 (c) The president may hire employees of the bank reasonably
24 necessary for the efficient performance of the functions of the bank.
25 Subject to the approval of the board of directors, the president may
26 also contract for and engage the services of professional and technical
27 advisors. The board of directors shall prescribe the duties and
28 compensation of employees of the bank. Employees of the bank are not
29 employees of the state but are considered to be employees of a public

1 organization for purposes of AS 39.30.150 - 39.30.180 and AS 39.35.

2 * Sec. 3. AS 44.81.110 is amended to read:

3 Sec. 44.81.110. COMPENSATION OF BOARD MEMBERS. Members of the
4 board receive compensation and are entitled to per diem and travel
5 allowances at a rate determined by the board for each day the board
6 meets if they attend the meeting [AND ARE ENTITLED TO PER DIEM AND
7 TRAVEL ALLOWANCES AS PROVIDED BY LAW FOR MEMBERS OF STATE BOARDS AND
8 COMMISSIONS].

9 * Sec. 4. AS 44.81.160 is amended to read:

10 Sec. 44.81.160. PLEDGE OF THE STATE. The state pledges to and
11 agrees with any lender to the bank [THE HOLDERS OF THE BONDS ISSUED
12 UNDER THIS CHAPTER] and with the federal agency or regional institution
13 of the federal farm credit system which loans or contributes funds in
14 respect of a project, that the state will not limit or alter the rights
15 and powers vested in the bank by this chapter to fulfill the terms of
16 any contract made by the bank with the lender to the bank [HOLDERS] or
17 federal agency or regional institution of the federal farm credit
18 system, or in any way impair the rights and remedies of the lender to
19 the bank or federal agency or regional institution of the federal farm
20 credit system [HOLDERS UNTIL THE BONDS, TOGETHER WITH INTEREST ON THEM,
21 WITH INTEREST ON UNPAID INSTALLMENTS OF INTEREST, AND ALL COSTS AND
22 EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDING BY OR ON BEHALF OF
23 THE HOLDERS, ARE FULLY MET AND DISCHARGED]. The bank is authorized to
24 include this pledge and agreement of the state, insofar as it refers to
25 a lender to the bank [HOLDERS OF BONDS OF THE BANK] in a contract with
26 the maker of a loan [HOLDERS], and insofar as it relates to a federal
27 agency or regional institution of the federal farm credit system, in a
28 contract with a federal agency or regional institution of the federal
29 farm credit system.

1 * Sec. 5. AS 44.81.200 is amended to read:

2 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board of directors
3 shall publish an annual report to the bank's members [SHAREHOLDERS].
4 The report shall be made available to the public and shall include
5 financial statements audited by independent outside auditors, [A STATE-
6 MENT OF THE AMOUNT OF MONEY RECEIVED BY THE BANK FROM EACH SOURCE
7 DURING THE PERIOD COVERED,] a statement of the bank's investments, a
8 description of the bank's loan [INVESTMENT] activity during the period
9 covered by the report, an analysis of economic and other effects of
10 loan [INVESTMENT] decisions on the state's commercial fishing and
11 agriculture industries, and any other information the board believes
12 would be of interest to the governor, the legislature and the public.
13 The board may also publish such other reports as it considers desirable
14 to carry out its purposes.

15 * Sec. 6. AS 44.81 is amended by adding new sections to read:

16 Sec. 44.81.260. DATA REGARDING RECORDS OF THE BANK. (a) Except
17 as provided in (b) of this section, the directors, officers, and em-
18 ployees of the bank shall hold in strict confidence all information
19 regarding the business records of the bank, including information as to
20 the character, credit standing and property of members and applicants
21 for loans. They shall not exhibit or quote from the bank's business
22 records, including documents regarding personnel of the bank or pertain-
23 ing to members or applicants for loans.

24 (b) The requirements of (a) of this section are subject to the
25 following exceptions:

26 (1) Examiners and other authorized representatives of the
27 commissioner of commerce and economic development and other authorized
28 regulatory agencies have free access to all information, records and
29 files.

1 (2) The board of directors or the president of the bank ^{shall} may
2 supply statistical and other impersonal information pertaining to
3 members, applicants, ^{employees} and loans in response to requests from the legisla-
4 ture or a state agency, members of the federal farm credit system, or a
5 responsible private organization.

6 (3) Information concerning members may be given for the
7 confidential use of a member of the federal farm credit system or other
8 financial institution in contemplation of the extension of credit or
9 the collection of loans.

10 (4) Impersonal information based solely on transactions or
11 experience with a member, such as amounts of loans, terms, and payment
12 records may be given by the bank for the confidential use of a reliable
13 organization in contemplation of the extension of credit.

14 (5) Credit information concerning a member may be given when
15 the member consents to it in writing.

16 (6) In litigation between a member (or his successor in
17 interest) and the bank, any competent evidence may be introduced with
18 respect to relevant statements made orally or in writing by or to the
19 member or his successor.

20 Sec. 44.81.270. POWERS OF COMMISSIONER OF COMMERCE AND ECONOMIC
21 DEVELOPMENT TO EXAMINE BANK. The commissioner of commerce and economic
22 development may cause the bank to be examined in the manner and under
23 the conditions prescribed by the Alaska Banking Code (AS 06.05) for
24 examination of state banks. The commissioner or his examiner have free
25 access to all books and papers of the bank which relate to its business
26 and books and papers kept by a director, officer, or employee relating
27 to or upon which a record of its business is kept, and may summon
28 witnesses and administer oaths or affirmations in the examination of
29 the directors, officers, or employees of the bank or any other person

1 in relation to its affairs, transactions, and conditions, and may
2 require and compel the production of records, books, papers, contracts,
3 or other documents by court order if not voluntarily produced.

4 Sec. 44.81.280. PROHIBITION ON RELEASE OF INFORMATION. The
5 commissioner of commerce and economic development, his examiner, and
6 his employees may not divulge information acquired by them in the
7 process of examination conducted under AS 44.81.270, except insofar as
8 the information is necessary by law or under court order.

9 * Sec. 7. AS 44.81.210(a) is amended by adding a new paragraph to read:

10 *New Section* (22) use Alaska limited entry permits as security for loans
11 under (1) of this subsection for the repair, restoration, or upgrading
12 of existing vessels and gear, for the purchase of entry permits and
13 gear, and for the construction and purchase of vessels; the provisions
14 of AS 44.81.230 - 44.81.250 apply to Alaska limited entry permits
15 pledged as security for loans in accordance with this paragraph.

16 * Sec. 8. FINDINGS. The legislature finds that

17 (1) the Alaska Commercial Fishing and Agriculture Bank has been
18 established in the form of a cooperative for the purpose of providing
19 capital to Alaska's commercial fishermen and farmers and assisting in the
20 development of fishing and agriculture in the state;

21 (2) the state has invested \$32 million in the bank to assist in
22 accomplishing its purposes;

23 (3) the state has an interest in assuring that its money is being
24 used in a manner so that the bank will accomplish those purposes which the
25 legislature intended in establishing the bank;

26 (4) audit and examination of the bank by the state can best be
27 accomplished by use of bank examiners of the Department of Commerce and
28 Economic Development to complement the audit conducted by the bank's inde-
29 pendent outside auditors;

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(5) there is an expectation of privacy guaranteed by the Constitution of the State of Alaska which inures to the members of the bank, both as borrower and as capital shareholder with an equity interest in the bank, which can be protected through adherence to established methods of bank examination.

* Sec. 9. AS 44.81.080, 44.81.120, 44.81.130, 44.81.140, 44.81.150, 44.81.170, 44.81.180, and 44.81.220 are repealed.

* Sec. 10. This Act takes effect immediately in accordance with AS 01.-10.070(c).

Section

- 170. Exemption from taxation
- 180. Bonds legal investments for fiduciaries
- 190. Conflicts of interest
- 200. Reports and publications
- 210. Powers of the bank
- 220. Transition

Section

- 230. Loans for purchase of Alaska limited entry permits
- 240. Default and foreclosure of loans for limited entry permits
- 250. Deficiencies and transfer of entry permits after foreclosure
- 350. Definitions

Editor's note. — As to legislative findings and the purposes of the enabling act, see §§ 1 and 2, ch. 159, SLA 1978,

respectively, in the 1978 Temporary and Special Acts and Resolves.

Sec. 44.81.010. Commercial Fishing and Agriculture Bank. (a) There is established the Alaska Commercial Fishing and Agriculture Bank. The bank is a public corporation and government instrumentality in the Department of Commerce and Economic Development but has a legal existence independent of and separate from the state. The exercise by the bank of the powers conferred by this chapter is considered an essential governmental function of the state. Except as otherwise provided in this chapter, the bank is subject to the provisions of AS 10.15.005 — 10.15.600.

(b) For the purpose of the funding of the bank's operations, the board of directors may issue nonvoting, preferred shares of stock in the bank and determine the value of each share. The State of Alaska, through appropriate agencies, may purchase the nonvoting, preferred shares issued by the bank. Shares purchased by the state shall be repurchased by the bank within 20 years after their purchase. If the bank fails to repurchase the shares within 20 years, the commissioner of commerce and economic development may dissolve the bank.

(c) After the board of directors has completed the necessary organizational matters described in AS 44.81.030 — 44.81.040, the commissioner of revenue may purchase with funds from the general fund up to \$2,000,000 of preferred stock of the bank during fiscal year 1979 at such time and with terms agreed upon by the commissioner and the board. (§ 3 ch 159 SLA 1978; am § 1 ch 53 SLA 1979; am § 12 ch 122 SLA 1980)

Effect of amendments. — The 1979 amendment inserted "Alaska" in the first sentence of subsection (a).

The 1980 amendment deleted "initial" preceding "funding" near the beginning of subsection (b) substituted "may" for

"purchase" near the beginning of the second sentence of subsection (b), deleted "shall" preceding "determine" near the middle of the first sentence of subsection (b), and deleted "initially" following "preferred shares" near the middle of the

Sec. 44.81.020. Board of directors. (a) The bank shall be managed by a board of directors consisting of seven members. At least one member of the board shall be an Alaska farmer with at least 10 years of Alaskan farm experience. Initial appointments to the board shall be made by the governor. Two of the initial appointments shall be made at the time of the first annual membership meeting of the bank. Thereafter, five board members shall be elected by the members of the bank, with at least one of the elected board members being an Alaska farmer with at least 10 years of Alaskan farm experience, and two board members shall be appointed by the governor until the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state. After repurchase is completed, all board members shall be elected by the members of the bank. The board members shall annually elect a chairman from among themselves. The purpose of the board is to manage the assets of the bank.

(b) The governor shall designate the two members whose positions on the board will remain appointive for the period set out in (a) of this section. (§ 3 ch 159 SLA 1978; am § 2 ch 53 SLA 1979; am § 3 ch 51 SLA 1980)

Effect of amendments. — The 1979 amendment designated the provisions of this section as subsection (a) and in that subsection, substituted "seven members" for "five members" in the first sentence, added the present second, fourth and sixth sentences, inserted "five" preceding "board members" in the present fifth sentence, and added the language beginning "with at least one of the elected board members" at the end of the present fifth sentence. The amendment also added subsection (b).

The 1980 amendment substituted

"members of the bank" for "shareholders" near the beginning and at the end of the fifth sentence in subsection (a).

Editor's note. — Section 6, ch. 53, SLA 1979, provides: "For the purposes of AS 44.81.020 and 44.81.090, the five members of the board of directors of the Commercial Fishing and Agriculture Bank who were appointed before August 4, 1979 shall continue to serve on the board of directors until their terms expire as provided in AS 44.81.090."

Sec. 44.81.030. Articles of incorporation. Not later than November 1, 1978, the board of directors shall file with the commissioner of commerce and economic development articles of incorporation as provided in AS 10.15.340 — 10.15.355 except that any filing fees shall be waived. (§ 3 ch 159 SLA 1978)

Sec. 44.81.040. Bylaws. The board of directors shall adopt the initial bylaws of the bank. The power to alter, amend or repeal the bylaws is vested in the board of directors. The bylaws may contain provisions for the regulation and management of the affairs of the bank not inconsistent with this chapter or other provisions of law. (§ 3 ch 159 SLA 1978)

Sec. 44.81.050. Membership meetings. Upon filing the articles of

hold public meetings throughout the state for the purpose of explaining to members of the commercial fishing and farming industries the functions of the bank and to encourage membership in the bank. (§ 3 ch 159 SLA 1978)

Sec. 44.81.060. Membership stock. (a) The board of directors shall issue shares of membership stock in the bank in the amounts and with the value determined by the board and stated in the articles of incorporation.

(b) Loans made to members of the bank under the provisions of this chapter shall be in accordance with a schedule of maximum amounts adopted by the board of directors based on proportional ownership of shares of capital stock. (§ 3 ch 159 SLA 1978; am § 4 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "members" for "shareholders" near the beginning of subsection (b), and added "of capital stock" at the end of subsection (b).

Sec. 44.81.070. President; officers and employees. (a) The board of directors shall employ a president. The president may not be a member of the board of directors. The president serves at the pleasure of the board of directors. The president is the chief executive officer of the bank.

(b) The board of directors shall appoint one or more vice-presidents, as prescribed in the bylaws of the bank, a secretary, a treasurer and other officers as the board of directors considers necessary. The board of directors may appoint one person to more than one of the positions described in this subsection. The officers described in this subsection are not required to be members of the board of directors.

(c) The president may hire employees of the bank reasonably necessary for the efficient performance of the functions of the bank. Subject to the approval of the board of directors, the president may also contract for and engage the services of professional and technical advisors. The board of directors shall prescribe the duties and compensation of employees of the bank. (§ 3 ch 159 SLA 1978; am § 5 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment rewrote the section.

Sec. 44.81.080. Exempt status. Employees of the bank are in the exempt service under AS 89.25. (§ 3 ch 159 SLA 1978)

Sec. 44.81.090. Term of office. The members of the board shall serve for terms of three years, and they may serve successive terms. The first five members of the first five members

the second annual membership meeting of the bank, and one member serving until the third annual membership meeting of the bank. Initial terms of the two members appointed at the time of the first annual membership meeting of the bank shall be one member serving until the second annual membership meeting of the bank and one member serving until the third annual membership meeting of the bank. (§ 3 ch 159 SLA 1978; am § 3 ch 53 SLA 1979)

Effect of amendment. — The 1979 amendment substituted "serve for terms" for "be appointed for terms" and "serve successive terms" for "be reappointed" in the first sentence, inserted "of the first five members appointed to the board" and substituted "until the first annual membership meeting of the bank" for "for one year," "until the second annual membership meeting of the bank" for "for two years," and "until the third annual membership meeting of the bank" for "for

three years" in the third sentence, and added the fourth sentence.

Editor's note. — Section 6, ch. 53, SLA 1979, provides: "For the purposes of AS 44.81.020 and AS 44.81.090, the five members of the board of directors of the Commercial Fishing and Agriculture Bank who were appointed before August 4, 1979, shall continue to serve on the board of directors until their terms expire as provided in AS 44.81.090."

Sec. 44.81.100. Quorum. A majority of the members of the board constitutes a quorum for the transaction of business and the exercise of the powers and duties of the board. (§ 3 ch 159 SLA 1978)

Sec. 44.81.110. Compensation of board members. Members receive compensation at a rate determined by the board for each day the board meets if they attend the meeting and are entitled to per diem and travel allowances as provided by law for members of state boards and commissions. (§ 3 ch 159 SLA 1978)

Sec. 44.81.120. Bonds of the bank. (a) The bank may borrow money and may issue bonds for that purpose, including but not limited to bonds on which the principal and interest are payable

(1) exclusively from the income and receipts or other money derived from the project financed with the proceeds of the bonds;

(2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed in whole or in part with the proceeds of the bonds; or

(3) from its income and receipts or other assets generally, or a designated part or parts of them.

(b) Bonds shall be authorized by resolution of the board of directors, and be dated and shall mature as the resolution may provide, except that no bond may mature more than 30 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of

(c) All bonds, regardless of form or character, shall be negotiable instruments for all the purposes of the Uniform Commercial Code.

(d) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the board of directors may determine.

(e) The superior court shall have jurisdiction to hear and determine suits, actions or proceedings relating to the bank, including suits, actions or proceedings brought to foreclose or otherwise enforce a mortgage, pledge, assignment or security of a holder of its bonds or by a trustee for or other representative of the holders. (§ 3 ch 159 SLA 1978)

Sec. 44.81.130. Trust indentures and trust agreements. In the discretion of the board of directors an issue of bonds may be secured by a trust indenture or trust agreement between the bank and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee by means of which the bank may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the board of directors may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the bank or of money or other property of the bank or in which it has an interest;

(B) the terms and conditions upon which additional bonds of the bank may be issued;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the bank either presently in hand or to be received in the future, or both; and

(3) provide for any other matters of like or different character which in any way affect the security or protection of the bonds. (§ 3 ch 159 SLA 1978)

Sec. 44.81.140. Validity of pledge. It is the intention of the legislature that a pledge made in respect of bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by the bank shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the bank irrespective of whether the parties have notice. Neither the resolution, trust agreement nor any other instrument by which a

Sec. 44.81.150. Nonliability on bonds. (a) Neither the members of the board of directors, the president, staff, nor a person executing the bonds is liable personally on the bonds or subject to personal liability or accountability by reason of the issuance of the bonds.

(b) The bonds issued by the bank may not constitute an indebtedness or other liability of the state or of a political subdivision of the state, except the bank, but shall be payable solely from the income and receipts or other funds or property of the bank. The bank may not pledge the faith or credit of the state or of a political subdivision of the state, except the bank, to the payment of a bond, and the issuance of a bond by the bank shall not directly or indirectly or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bond. (§ 3 ch 159 SLA 1978; am § 6 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "president" for "executive director" following "board of directors, the" near the beginning of subsection (a).

Sec. 44.81.160. Pledge of the state. The state pledges to and agrees with the holders of the bonds issued under this chapter and with the federal agency or regional institution of the federal farm credit system which loans or contributes funds in respect of a project, that the state will not limit or alter the rights and powers vested in the bank by this chapter to fulfill the terms of any contract made by the bank with the holders or federal agency or regional institution of the federal farm credit system, or in any way impair the rights and remedies of the holders until the bonds, together with interest on them, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The bank is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the bank in a contract with the holders, and insofar as it relates to a federal agency or regional institution of the federal farm credit system, in a contract with a federal agency or regional institution of the federal farm credit system. (§ 3 ch 159 SLA 1978)

Sec. 44.81.170. Exemption from taxation. The real and personal property of the bank and its assets, income and receipts are declared to be property of a political subdivision of the state and shall be exempt from all taxes and special assessments of the state or a political subdivision of the state, including, without limitation, all boroughs, cities, municipalities, school districts, public utility districts, and other taxing units. All bonds of the bank are declared to be issued by a political subdivision of the state, to be for an essential public and

the bonds, and all assets, income and receipts pledged to pay or secure the payment of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death. (§ 3 ch 159 SLA 1978)

Sec. 44.81.180. Bonds legal investments for fiduciaries. The bonds of the bank are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the bank are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized. (§ 3 ch 159 SLA 1978)

Sec. 44.81.190. Conflicts of interest. No member of the board of directors may vote on a transaction of the bank under this chapter if he is a party to the transaction. (§ 3 ch 159 SLA 1978)

Sec. 44.81.200. Reports and publications. The board of directors shall publish an annual report to the bank's shareholders. The report shall be made available to the public and shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the bank from each source during the period covered, a statement of the bank's investments, a description of the bank's investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions on the state's commercial fishing and agriculture industries, and any other information the board believes would be of interest to the governor, the legislature and the public. The board may also publish such other reports as it considers desirable to carry out its purposes. (§ 3 ch 159 SLA 1978)

Sec. 44.81.210. Powers of the bank. (a) The bank may

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing,

owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a member of the bank; however, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a member of the bank.

(2) make and alter bylaws necessary or desirable to carry out its corporate functions;

(3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons;

(4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(5) adopt, alter, and use a corporate seal;

(6) sue and be sued in the name of the bank;

(7) issue bonds to carry out any of its corporate purposes and powers;

(8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;

(11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

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

(13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;

(14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;

(16) provide technical services to members of the bank; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the member to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter;

(20) make loans to individual commercial fishermen for limited entry permits; a loan under this paragraph may be made only to an individual commercial fisherman who has been a state resident for a continuous period of five years immediately preceding the date of application for the loan and who has had a crewmember or commercial fishing license under AS 16.05.480 or a permit under AS 16.43 for any one of the past five years, and who has actively participated in the fishery during that period; loans made under this paragraph are subject to the provisions of AS 44.81.230;

(21) indemnify a director, officer or employee of the bank and his heirs, executors and administrators against all liabilities and related expenses including, but not limited to, court costs and attorney fees, judgments, and the cost of reasonable settlements, incurred by him in connection with or arising out of an action or proceeding brought against him because of an act or omission in the performance of his official duties as director, officer or employee of the bank regardless of whether he is a director, officer or employee at the time the expenses or liabilities are incurred.

(b) The provisions of (a)(21) of this section do not authorize the bank to indemnify a director, officer or employee of the bank who is adjudged liable for negligence or misconduct in the performance of his official duties. (§ 3 ch 159 SLA 1978; am § 4 ch 53 SLA 1979; am §§ 7—10 ch 51 SLA 1980)

Effect of amendments. — The 1979 amendment added paragraph (20).

The 1980 amendments in paragraph (1) of subsection (a), inserted "suppliers" following "harvesters, processors" and deleted "primarily" following "or joint ventures" near the beginning and

substituted "member" for "shareholder" near the middle and near the end. The amendment also substituted "members of the bank" for "shareholders" and "member" for "shareholder" in paragraph (16) of subsection (a), added paragraph (21) of subsection (a), and added subsection (b).

Sec. 44.81.220. Transition. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased

the terms of its bylaws and subject to the provisions of AS 10.15.005 — 10.15.600. (§ 3 ch 159 SLA 1978)

Sec. 44.81.230. Loans for purchase of Alaska limited entry permits. (a) A loan under AS 44.81.210(20) for the purchase of a limited entry permit may be made only upon certification by the commission that the fisherman is a person who qualifies as a transferee for the permit under AS 16.43 and the regulations adopted by the commission.

(b) Upon approval by the bank, the permit to be purchased may be pledged as security for a loan under (a) of this section, if

(1) the certificate for the pledged permit lists the bank as the legal owner of the permit;

(2) the certificate for the pledged permit lists the debtor as the equitable owner of the permit;

(3) all annual permit cards issued under the pledged permit list the name of the debtor;

(4) all obligations and responsibilities of a permit owner are assumed by the debtor;

(5) co-signers or other sureties for performance under the note are not vested with any rights in the pledged permit and their obligation is limited to satisfaction of the note and payment of costs directly incurred by the bank in administering the loan.

(c) Upon satisfaction of the note by the debtor, the bank shall certify to the commission that the note has been satisfied.

(d) Upon certification as provided in (c) of this section, the commission shall amend the permit certificate to list the debtor as the legal owner. (§ 5 ch 53 SLA 1979; am §§ 11—13 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment substituted "commission" for "Alaska Commercial Fisheries Entry Commission (AS 16.43.020)" in subsection

(a), deleted "the executive director of" following "permit lists" in paragraph (1) of subsection (b), and substituted "bank" for "executive director" in subsection (c).

Sec. 44.81.240. Default and foreclosure of loans for limited entry permits. (a) If the debtor defaults upon a note for which a limited entry permit has been pledged as security under AS 44.81.230, the bank shall provide the debtor, by registered or certified mail sent to his last known address on file with the bank, with a notice of default which includes

(1) a description of the security given for the note including the number assigned to the pledged permit by the commission;

(2) the date upon which the default occurred;

(3) the amount of arrearages as of the date of the notice, the total amount remaining on the note less unearned interest, and the amount of daily interest;

(5) a statement that the note may be reinstated if brought current within 60 days from the postmark date of the notice;

(6) a statement that the note may be paid in full less unearned interest within 90 days from the postmark date of the notice;

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

(8) a notice in at least 10-point bold type stating: "IMPORTANT: YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED AGAINST YOU."

(b) Upon the debtor's failure to reinstate or satisfy the note within the time specified in (a) of this section, his equitable interest is terminated by operation of law without further notice. Any entry permit cards issued to him under the permit shall be cancelled immediately upon receipt by the commission of a certificate of termination containing a copy of the notice required by (a) of this section issued by the bank. (§ 5 ch 53 SLA 1979; am § 14 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment deleted "the executive director of" preceding "the bank" near the middle of the introductory paragraph of subsection (a) and near the end of subsection (b), and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" at the end of paragraph (1) in subsection (a).

Sec. 44.81.250. Deficiencies and transfer of entry permits after foreclosure. (a) Upon a foreclosure on an entry permit as provided in AS 44.81.240, the bank shall offer the commission a right of first refusal if the permit is subject to a buy-back program under AS 16.43.290 — 16.43.330 at a price equal to the amount outstanding on the note plus any costs the bank directly incurred in administering the loan.

(b) If the commission does not exercise its right of first refusal within 30 days after it receives the offer, or if the permit is not subject to a buy-back program under AS 16.43.290 — 16.43.330, the bank shall promptly notify the debtor of this fact. The debtor has 30 days from the postmark date of the notice to nominate a person qualified to assume the note. The person nominated must qualify under the requirements of AS 44.81.230(a). If qualified, he may assume all rights and liabilities of the original debtor.

(c) If the debtor is unable to nominate a qualified person to assume the note under (b) of this section, the permit must be made available to a qualified person, chosen as provided in this section, who shall assume the note subject to all rights and liabilities of the original

16.43 and regulations adopted by the commission and who have met the residency and commercial fishing participation requirements of AS 44.81.210(20). The bank shall then determine, in order of presentation, any remaining qualifications. The bank shall allow the first applicant meeting all qualifications to assume the note.

(d) Nothing in this section affects the right of the bank to institute legal action for a deficiency resulting from a default on a note given under AS 44.81.230. In addition to any deficiency, the debtor is liable for the costs of administering the note and for costs and attorney fees. (§ 5 ch 53 SLA 1979; am §§ 15--17 ch 51 SLA 1980)

Effect of amendment. — The 1980 amendment, in subsection (a), deleted "the executive director of" preceding "the bank" near the beginning of the subsection and substituted "commission" for "Alaska Commercial Fisheries Entry Commission" near the beginning of the subsection. The amendment also substituted "commission" for "Alaska Commercial Fisheries Entry Commission" in the second sentence in subsection (c), deleted "executive director of the" preceding "bank shall" in the third sentence in subsection (c), substituted "bank" for "executive director" in the last sentence in subsection (c), and deleted "the executive director of" preceding "the bank" near the beginning of subsection (d).

Sec. 44.81.350. Definitions. In this chapter

(1) "bank" means the Alaska Commercial Fishing and Agriculture Bank;

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

(3) "member of the bank" includes a holder of a share of membership stock of the bank or a patron of the bank with retained patronage earnings of \$2,500 or more to his credit;

(4) "supplier" means a person whose main source of income is from providing goods or services that are directly related to commercial fishing or agriculture to individuals, corporations, partnerships or joint ventures engaged in commercial fishing or agriculture. (§ 18 ch 51 SLA 1980)

Chapter 82. Alaska Gas Pipeline Financing Authority.

Section	Section
10. Creation of authority	110. Legislative approval
20. Membership	115. Nomination of a member of the board
30. Officers and quorum	120. Trust indentures and trust agreements
40. Compensation	130. Nonliability on bonds
50. Staff	140. Pledge of the state
60. Legal counsel	150. Exemption from taxation
70. Purpose of authority	160. Bonds legal investments for fiduciaries
80. General powers	
90. Bonds of the authority	

Introduced: 3/26/81
Referred: Judiciary

1 IN THE HOUSE

BY GARDINER

2 HOUSE BILL NO. 413

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Commercial Fishing and
7 Agriculture ^{Cooperative} Bank, and providing for an effective
8 date."

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

10 * Section 1. AS 44.81.010(a) is amended to read:

11 Sec. 44.81.010. ALASKA COMMERCIAL FISHING AND AGRICULTURE BANK.

12 (a) There is established the Alaska Commercial Fishing and Agriculture
13 Bank. ~~[THE BANK IS A PUBLIC CORPORATION AND GOVERNMENT INSTRUMENTALITY~~
14 ~~IN THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT BUT HAS A LEGAL~~
15 ~~EXISTENCE INDEPENDENT OF AND SEPARATE FROM THE STATE.]~~ The exercise by
16 the bank of the powers conferred by this chapter is considered to be for
17 a public purpose ~~[AN ESSENTIAL GOVERNMENTAL FUNCTION OF THE STATE].~~
18 Except as otherwise provided in this chapter, the bank is subject to
19 the provisions of AS 10.15.005 - 10.15.600. The bank is exempt from the
20 provisions of the Alaska Banking Code (AS 06.05) in the exercise of
21 powers granted by this chapter.

22 * Sec. 2. AS 44.81.070(c) is amended to read:

23 (c) The president may hire employees of the bank reasonably
24 necessary for the efficient performance of the functions of the bank.
25 Subject to the approval of the board of directors, the president may
26 also contract for and engage the services of professional and technical
27 advisors. The board of directors shall prescribe the duties and compen-
28 sation of employees of the bank. Employees of the bank are not em-
29 ployees of the state but are considered to be employees of a public

1 organization for purposes of AS 39.30.150 - 39.30.180 and AS 39.35.

2 * Sec. 3. AS 44.81.110 is amended to read:

3 Sec. 44.81.110. COMPENSATION OF BOARD MEMBERS. Members of the
4 board receive compensation and are entitled to per diem and travel
5 allowances at a rate determined by the board for each day the board
6 meets if they attend the meeting [~~AND ARE ENTITLED TO PER DIEM AND~~
7 ~~TRAVEL ALLOWANCES AS PROVIDED BY LAW FOR MEMBERS OF STATE BOARDS AND~~
8 ~~COMMISSIONS~~].

9 * Sec. 4. AS 44.81.160 is amended to read:

10 Sec. 44.81.160. PLEDGE OF THE STATE. The state pledges to and
11 agrees with any lender to the bank [~~THE HOLDERS OF THE BONDS ISSUED~~
12 ~~UNDER THIS CHAPTER~~] and with the federal agency or regional institution
13 of the federal farm credit system which loans or contributes funds in
14 respect of a project, that the state will not limit or alter the rights
15 and powers vested in the bank by this chapter to fulfill the terms of
16 any contract made by the bank with the lender to the bank [~~HOLDERS~~] or
17 federal agency or regional institution of the federal farm credit
18 system, or in any way impair the rights and remedies of the lender to
19 the bank or federal agency or regional institution of the federal farm
20 credit system [~~HOLDERS UNTIL THE BONDS, TOGETHER WITH INTEREST ON THEM,~~
21 ~~WITH INTEREST ON UNPAID INSTALLMENTS OF INTEREST, AND ALL COSTS AND~~
22 ~~EXPENSES IN CONNECTION WITH ANY ACTION OR PROCEEDING BY OR ON BEHALF OF~~
23 ~~THE HOLDERS, ARE FULLY MET AND DISCHARGED~~]. The bank is authorized to
24 include this pledge and agreement of the state, insofar as it refers to
25 a lender to the bank [~~HOLDERS OF BONDS OF THE BANK~~] in a contract with
26 the maker of a loan [~~HOLDERS~~], and insofar as it relates to a federal
27 agency or regional institution of the federal farm credit system, in a
28 contract with a federal agency or regional institution of the federal
29 farm credit system.

1 * Sec. 5. AS 44.81.200 is amended to read:

2 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board of directors
3 shall publish an annual report to the bank's members [~~SHAREHOLDERS~~].
4 The report shall be made available to the public and shall include
5 financial statements audited by independent outside auditors, [~~A STATE~~
6 ~~MENT OF THE AMOUNT OF MONEY RECEIVED BY THE BANK FROM EACH SOURCE~~
7 ~~DURING THE PERIOD COVERED,~~] a statement of the bank's investments, a
8 description of the bank's loan [~~INVESTMENT~~] activity during the period
9 covered by the report, an analysis of economic and other effects of
10 loan [~~INVESTMENT~~] decisions on the state's commercial fishing and
11 agriculture industries, and any other information the board believes
12 would be of interest to the governor, the legislature and the public.
13 The board may also publish such other reports as it considers desirable
14 to carry out its purposes.

15 * Sec. 6. AS 44.81 is amended by adding new sections to read:

16 Sec. 44.81.260. DATA REGARDING RECORDS OF THE BANK. (a) Except
17 as provided in (b) of this section, the directors, officers, and em-
18 ployees of the bank shall hold in strict confidence all information
19 regarding the business records of the bank, including information as to
20 the character, credit standing and property of members and applicants
21 for loans. They shall not exhibit or quote from the bank's business
22 records, including documents regarding personnel of the bank or pertain-
23 ing to members or applicants for loans.

24 (b) The requirements of (a) of this section are subject to the
25 following exceptions:

26 (1) Examiners and other authorized representatives of the
27 commissioner of commerce and economic development and other authorized
28 regulatory agencies have free access to all information, records and
29 files.

1 (2) The board of directors or the president of the bank may
2 supply statistical and other impersonal information pertaining to
3 members, applicants, and loans in response to requests from the legisla-
4 ture or a state agency, members of the federal farm credit system, or a
5 responsible private organization.

6 (3) Information concerning members may be given for the
7 confidential use of a member of the federal farm credit system or other
8 financial institution in contemplation of the extension of credit or
9 the collection of loans.

10 (4) Impersonal information based solely on transactions or
11 experience with a member, such as amounts of loans, terms, and payment
12 records may be given by the bank for the confidential use of a reliable
13 organization in contemplation of the extension of credit.

14 (5) Credit information concerning a member may be given when
15 the member consents to it in writing.

16 (6) In litigation between a member (or his successor in
17 interest) and the bank, any competent evidence may be introduced with
18 respect to relevant statements made orally or in writing by or to the
19 member or his successor.

20 Sec. 44.81.270. POWERS OF COMMISSIONER OF COMMERCE AND ECONOMIC
21 DEVELOPMENT TO EXAMINE BANK. The commissioner of commerce and economic
22 development may cause the bank to be examined in the manner and under
23 the conditions prescribed by the Alaska Banking Code (AS 06.05) for
24 examination of state banks. The commissioner or his examiner have free
25 access to all books and papers of the bank which relate to its business
26 and books and papers kept by a director, officer, or employee relating
27 to or upon which a record of its business is kept, and may summon
28 witnesses and administer oaths or affirmations in the examination of
29 the directors, officers, or employees of the bank or any other person

1 in relation to its affairs, transactions, and conditions, and may require
2 and compel the production of records, books, papers, contracts, or
3 other documents by court order if not voluntarily produced.

4 Sec. 44.81.280. PROHIBITION ON RELEASE OF INFORMATION. The
5 commissioner of commerce and economic development, his examiner, and
6 his employees may not divulge information acquired by them in the
7 process of examination conducted under AS 44.81.270, except insofar as
8 the information is necessary by law or under court order. [However, the
9 commissioner may furnish information as to the condition of the bank to
10 the board of directors of the bank, to the legislature, or to members
11 of the federal farm credit system.]

12 * Sec. 7. FINDINGS. The legislature finds that

13 (1) the Alaska Commercial Fishing and Agriculture Bank has been
14 established in the form of a cooperative for the purpose of providing capital
15 to Alaska's commercial fishermen and farmers and assisting in the development
16 of fishing and agriculture in the state;

17 (2) the state has invested \$32 million in the bank to assist in
18 accomplishing its purposes;

19 (3) the state has an interest in assuring that its money is being
20 used in a manner so that the bank will accomplish those purposes which the
21 legislature intended in establishing the bank;

22 (4) audit and examination of the bank by the state can best be
23 accomplished by use of bank examiners of the Department of Commerce and
24 Economic Development to complement the audit conducted by the bank's indepen-
25 dent outside auditors;

26 (5) there is an expectation of privacy guaranteed by the Consti-
27 tution of the State of Alaska which inures to the members of the bank, both
28 as borrower and as capital shareholder with an equity interest in the bank,
29 which can be protected through adherence to established methods of bank

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1 examination.

2 * Sec. 8. AS 44.81.080, 44.81.120, 44.81.130, 44.81.140, 44.81.150,
3 44.81.170, 44.81.180, and 44.81.220 are repealed.

4 * Sec. 9. This Act takes effect immediately in accordance with AS 01.10.-
5 070(c).

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CURRENT STATUTES COVERING

§ 11.45.010
COMPUTER (Effective January 1, 1980)

CRIMINAL LAW

§ 11.45.055
CRIME

Secs. 11.45.010 — 11.45.055.

Repealed by § 21 ch 166 SLA 1978, effective January 1, 1980.

Cross references. — As to riot, disorderly conduct, and related offenses, see AS 11.61.100 et seq. As to forfeiture of gambling devices or records, see AS 11.66.270.

Editor's note. — The repealed chapter derived from §§ 4-2-1, 65-10-1 — 65-10-3, ACLA 1949; § 1, ch. 87, SLA 1965; § 1, ch.

173, SLA 1968; §§ 1, 2, ch. 225, SLA 1970; § 2, ch. 207, SLA 1972; § 1, ch. 44, SLA 1973; § 1, ch. 63, SLA 1973.

Legislative history reports. — For report on ch. 173, SLA 1968 (HB 397 am 3), see 1968 House Journal, p. 76. For report on ch. 44, SLA 1973 (CSHB 290), see 1973 Senate Journal Supplement No. 13, p. 2.

Chapter 46. Offenses Against Property.

Article

1. Theft and Related Offenses (§§ 11.46.100 — 11.46.290)
2. Burglary and Criminal Trespass (§§ 11.46.300 — 11.46.350)
3. Arson, Criminal Mischief, and Related Offenses (§§ 11.46.400 — 11.46.490)
4. Forgery and Related Offenses (§§ 11.46.500 — 11.46.580)
5. Business and Commercial Offenses (§§ 11.46.600 — 11.46.730)
6. General Provisions (§§ 11.46.980 — 11.46.990)

Effective date of chapter. — Section 25, ch. 166, SLA 1978, provides: "This Act takes effect January 1, 1980."

Editor's note. — Section 23, ch. 166, SLA 1978, effective January 1, 1980, provides in subsection (a) that, except as otherwise provided, this chapter governs the construction of any offense committed on or after January 1, 1980, as well as the construction and application of any defense to a prosecution for an offense.

Section 23 of ch. 166, in subsection (f), provides that this chapter does not apply to

or govern the construction of and punishment for any offense committed before January 1, 1980, or the construction or application of any defense to a prosecution for the offense, and that an offense shall be construed and punished according to the law existing at the time of the commission of the offense in the same manner as if this chapter had not become law.

Legislative history report. — For report on ch. 166, SLA 1978 (HB 661), see 1978 Senate Journal Supplement No. 47.

Article 1. Theft and Related Offenses.

- Section**
- 100. Theft defined
 - 110. Consolidation of theft offenses:
Pleading and proof
 - 120. Theft in the first degree
 - 130. Theft in the second degree
 - 140. Theft in the third degree
 - 150. Theft in the fourth degree
 - 160. Theft of lost or mislaid property
 - 180. Theft by deception
 - 190. Theft by receiving
 - 200. Theft of services

- Section**
- 210. Theft by failure to make required disposition of funds received or held
 - 220. Concealment of merchandise
 - 230. Reasonable detention as defense
 - 260. Removal of identification marks
 - 270. Unlawful possession
 - 280. Issuing a bad check
 - 285. Fraudulent use of a credit card
 - 290. Obtaining a credit card by fraudulent means

W. AMENDMENTS THRU 1980

(Effective January 1, 1980)

Sec. 11.46.100. Theft defined. A person commits theft if

(1) with intent to deprive another of property or to appropriate property of another to himself or a third person, he obtains the property of another;

(2) he commits theft of lost or mislaid property under § 160 of this chapter;

(3) he commits theft by deception under § 180 of this chapter;

(4) he commits theft by receiving under § 190 of this chapter;

(5) he commits theft of services under § 200 of this chapter; or

(6) he commits theft by failure to make required disposition of funds received or held under § 210 of this chapter. (§ 4 ch 166 SLA 1978)

Editor's note. — The cases cited in the note below were decided under former AS 11.20.140.

The "property of another" phrase in larceny statutes ordinarily refers to possession, not title, because the gravamen of the offense is the interference with another's possession of property. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

Proof of ownership not required. — The state need not prove, as an essential element of the crime of larceny, ownership of the property allegedly stolen. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

Definition of "goods" under former larceny statute. — Natural gas was included within the meaning of the word "goods." *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 302 (1970).

Electricity is included within the meaning of the word "goods." *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. (File No. 1153), 479 P.2d 302 (1970).

Electricity can be the subject of larceny. *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. (File No. 1153), 479 P.2d 302 (1970).

Former section required felonious intent on which to base a conviction. *Bowlby v. Daniels*, 17 Alas. 768 (1958).

Property stolen need not be for use of thief. — Nothing on the face of the former larceny section stated that the stolen property had to have been stolen for the use of the thief. *Perkins v. United States*, 16 Alas. 471, 237 F.2d 857 (9th Cir. 1956).

The wrongful taking of property of another constituted larceny although not

shown to be conversion for the use of the thief. *Perkins v. United States*, 16 Alas. 471, 237 F.2d 857 (9th Cir. 1956).

Larceny of electricity and diversion of electricity not the same. — A count charging larceny of electricity under the former larceny section was not a duplication of a charge contained in a count of unauthorized use or diversion of electricity under AS 42.20.030. *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 302 (1970).

As the former required proof of intent. — Where a count charged larceny of electricity, the state was obligated to prove a taking of electric current with the intent to permanently deprive the owner thereof. *Selman v. State*, Sup. Ct. Op. No. 302 (File No. 527), 406 P.2d 181 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. (File No. 1153), 479 P.2d 302 (1970).

Larceny of salmon from fish trap. — In a prosecution for larceny of salmon from a fish trap the question of whether there was ownership in the fish depended upon proofs at the trial since the fish when reduced to possession were subject to ownership. *Klemm v. United States*, 22 F.2d 977 (9th Cir. 1927).

Sufficiency of evidence. — The prosecution's evidence, which sufficiently established that the ring in question was taken without the consent of its possessor, was sufficient under Alaska's larceny statutes. *Pulakis v. State*, Sup. Ct. Op. No. 649 (File No. 1108), 476 P.2d 474 (1970).

For cases construing former AS 11.20.150, relating to larceny in building or vessel, see *Widermyre v. State*, Sup. Ct. Op. No. 122 (File No. 243), 377 P.2d 536 (1963); *Mahle v. State*, Sup. Ct. Op. No. 218 (File No. 433), 392 P.2d 19 (1964); *Stewart v. State*, Sup. Ct. Op. No. 457 (File No. 826), 438 P.2d 387 (1968); *Sidney v. State*, Sup.

Ct. Op. No. 607 (F. (1970); *Pulakis v. State*, Sup. Ct. Op. No. 1108), 476 P.2d 474 (1970); *Wortham v. State*, Sup. Ct. Op. No. 2452, 527 P.2d 11 (1974); *Sup. Ct. Op. No. P.2d 1016* (1977).
Am. Jur., ALR 32 Am. Jur., Lar Jur., Public Offi Jur., Receiving S Intent to conv use or to the use of larceny, 12 A.

Sec. 11.46.

(a) Each instance constitutes the

(b) An act committed for the commission of a particular crime

(c) Proof of intent defined in § 11.46.100 based upon § 11.46.100

Editor's note. note below was 11.20.140.

Sufficiency of indictment under this section was held in *matter it stated clearly enough to prepare for trial in case of a future offense. Prejudicial controlling case: United States, (9th Cir. 1958).*

An indictment under the former section must be found if the accused had the necessary intent, or by failing to state within the indictment the *Stapleton v. United States*, 415 (9th Cir. 1961).

Where indictment is with intent of the owner of the property, the intent is implicit in the

(Effective January 1, 1980)

reasonable doubt, that the property found in possession of the accused was, in truth and in fact, the identical property which was stolen. A bare assertion that property in the hands of accused was similar property or property that looked like it, was not sufficient to establish such property as the stolen property. *Karn v. United States*, 11 Alas. 225, 158 F.2d 568 (9th Cir. 1946).

Requirements as to circumstantial evidence. — Where prosecution relied entirely upon circumstantial evidence for a conviction under the former larceny section, under such circumstances the evidence must not only be consistent with guilt, but inconsistent with every reasonable hypothesis of innocence. The evidence should be required to point so surely and unerringly to the guilt of the accused as to exclude every reasonable

hypothesis but that of guilt. *Karn v. United States*, 11 Alas. 225, 158 F.2d 568 (9th Cir. 1946).

In a prosecution under the former larceny section the evidence, while circumstantial, was clearly adequate and measured up to the standards which the court of appeals has laid down in such cases. *Yoho v. United States*, 14 Alas. 174, 202 F.2d 241 (9th Cir. 1953).

Prosecution could waive felony and prosecute for misdemeanor. — If on trial a misdemeanor (e.g., larceny) turned out to be a felony (e.g., robbery), then the prosecution could in such cases waive the felony, and prosecute only for the constituent misdemeanor, supposing the misdemeanor be proved. *Perkins v. United States*, 16 Alas. 471, 237 F.2d 857 (9th Cir. 1956).

Sec. 11.46.120. Theft in the first degree. (a) A person commits the crime of theft in the first degree if he commits theft as defined in § 100 of this chapter and the value of the property or services is \$25,000 or more.

(b) Theft in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

Sec. 11.46.130. Theft in the second degree. (a) A person commits the crime of theft in the second degree if he commits theft as defined in § 100 of this chapter and

(1) the value of the property or services is \$500 or more but less than \$25,000;

(2) the property is a firearm or explosive; or

(3) the property is taken from the person of another.

(b) Theft in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

Sec. 11.46.140. Theft in the third degree. (a) A person commits the crime of theft in the third degree if he commits theft as defined in § 100 of this chapter and

(1) the value of the property or services is \$50 or more but less than \$500; or

(2) the property is a credit card.

(b) Theft in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.150. Theft in the fourth degree. (a) A person commits the crime of theft in the fourth degree if he commits theft as defined in § 100 of this chapter and the value of the property or services is less than \$50.

(b) Theft in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

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(Effective January 1, 1980)

Sec. 11.46.160. Theft of lost or mislaid property. (a) A person commits theft of lost or mislaid property if he obtains property of another knowing that the property was lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient and he fails to take reasonable measures to restore the property to the owner with intent to deprive the owner of the property.

(b) As used in this section "reasonable measures" includes notifying the identified owner or a peace officer. (§ 4 ch 166 SLA 1978)

For cases construing former AS 11.20.260, see *State v. Campbell*, Sup. Ct. Op. No. 1149 (File No. 2294), 536 P.2d 105 (1975).

ALR reference. — Lost property as subject of larceny, 36 ALR 373.

Sec. 11.46.180. Theft by deception. (a) A person commits theft by deception if, with intent to deprive another of property or to appropriate property of another to himself or a third person, he obtains the property of another by deception.

(b) In a prosecution based on theft by deception, if the state seeks to prove that the defendant used deception by promising performance which he did not intend to perform or knew would not be performed, that intent or knowledge may not be established solely by or inferred solely from the fact that the promise was not performed.

(c) As used in this section, "deception" has the meaning ascribed to it in AS 11.81.900 but does not include falsity as to matters having no pecuniary significance or "puffing" by statements unlikely to deceive reasonable persons in the group addressed. (§ 4 ch 166 SLA 1978)

For cases construing former AS 11.20.360, relating to obtaining money or property by false pretenses, see *Griggs v. United States*, 168 F. 572 (9th Cir. 1908); *United States v. Pearce*, 7 Alas. 246 (1924); *Tempe v. United States*, 14 Alas. 587, 211 F.2d 73 (9th Cir.), cert. denied, 347 U.S. 1013, 74 S. Ct. 866, 98 L. Ed. 1136 (1954); *Bonney v. United States*, 17 Alas. 542, 254 F.2d 392 (9th Cir. 1958).

Am. Jur., ALR and C.J.S. references. — 22 Am. Jur., False Pretenses, § 1 et seq.; 23 Am. Jur., Fraud and Deceit, §§ 23 to 110; 24 Am. Jur., Fraudulent Conveyances, § 1 et seq.

Obtaining money for goods not intended to be delivered as false pretenses, 17 ALR 199.

Appropriation of property after obtaining possession by fraud as larceny, 26 ALR 381.

Larceny by appropriation of property, possession of which was obtained by impersonating owner thereof, 26 ALR 389.

Purchase of property on credit without intent to pay for it as larceny, 35 ALR 1336.

Criminal offense of obtaining money under false pretenses predicated upon receipt or claim of benefits under insurance policy, 135 ALR 1157.

Criminal charge predicated upon fraudulent obtaining of check, note, etc., or signature thereon, from a person executing the same, 141 ALR 210.

Use of fictitious or assumed name, 49 ALR2d 852.

37 C.J.S., Fraud, § 154; 37 C.J.S., Fraudulent Conveyances, § 469.

(Effective January 1, 1980)

(2) as soon as reasonably practical after the entry, use, or occupancy, the person contacts the owner of the premises, the owner's agent or, if the owner is unknown, the nearest state or local police agency, and makes a report of the time of the entry, use, or occupancy and any damage to the premises or personal property, unless notice waiving necessity of the report is posted on the premises by the owner or the owner's agent. (§ 4 ch 166 SLA 1978)

Sec. 11.46.350. Definition. (a) As used in §§ 300 — 350 of this chapter, unless the context requires otherwise, "enter or remain unlawfully" means to

(1) enter or remain in or upon premises or in a propelled vehicle when the premises or propelled vehicle, at the time of the entry or remaining, is not open to the public and when the defendant is not otherwise privileged to do so; or

(2) fail to leave premises or a propelled vehicle that is open to the public after being lawfully directed to do so personally by the person in charge.

(b) For purposes of this section, a person who, without intent to commit a crime on the land, enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, is privileged to do so unless

(1) notice against trespass is personally communicated to him by the owner of the land or some other authorized person; or

(2) notice against trespass is given by posting in a reasonably conspicuous manner under the circumstances. (§ 4 ch 166 SLA 1978)

Article 3. Arson, Criminal Mischief, and Related Offenses.

Section	Section
400. Arson in the first degree	— 482. Criminal mischief in the second degree
410. Arson in the second degree	— 484. Criminal mischief in the third degree
430. Criminally negligent burning	— 486. Criminal mischief in the fourth degree
450. Failure to control or report a dangerous fire	488. Littering
— 480. Criminal mischief in the first degree	490. Definitions

Sec. 11.46.400. Arson in the first degree. (a) A person commits the crime of arson in the first degree if he intentionally damages any property by starting a fire or causing an explosion and by that act recklessly places another person in danger of serious physical injury.

(b) Arson in the first degree is a class A felony. (§ 4 ch 166 SLA 1978)

For cases construing former first degree arson statute, see *Salinas v. United States*, 277 F.2d 914 (9th Cir. 1960); *Rank v. State*, Sup. Ct. Op. No. 92 (File No. 167), 373 P.2d 734 (1962), overruled on another point in *Shafer v. State*, Sup. Ct. Op. No. 563 (File No. 1034), 456 P.2d 466 (1969).

For case construing former second degree arson statute, see *Tarney v. State*, Sup. Ct. Op. No. 911 (File No. 1486), 512 P.2d 923 (1973).

Am. Jur., ALR and C.J.S. references. — 4 Am. Jur., Arson, § 1 et seq.

(Effective January 1, 1980)

Burning as element of offense, 1 ALR 1163.

Evidence of other offenses in prosecution for arson, 3 ALR 1544; 27 ALR 358; 63 ALR 605.

Criminal responsibility of one cooperating in offense of arson which he is incapable of committing personally, 5 ALR 783; 74 ALR 1111; 131 ALR 1323.

Ownership of property as affecting criminal liability for burning thereof, 17 ALR 1168.

Intent as essential element of crime of burning property to defraud insurer, 17 ALR 1180.

Vacancy or nonoccupancy of building as affecting its character as "dwelling" as regards arson, 44 ALR2d 1466.

6 C.J.S. Arson, §§ 1 to 5, 12.

Sec. 11.46.410. Arson in the second degree. (a) A person commits the crime of arson in the second degree if he intentionally damages a building by starting a fire or causing an explosion.

(b) In a prosecution under this section, it is an affirmative defense

(1) that no person other than the defendant had a possessory, proprietary, or security interest in the building or that all persons having such an interest consented to the defendant's conduct; and

(2) that the sole intent of the defendant was to damage or destroy the building for a lawful purpose.

(c) Arson in the second degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross reference. — See note to AS 11.46.400.

C.J.S. reference. — 6 C.J.S., Arson, §§ 1 to 5, 12.

Sec. 11.46.430. Criminally negligent burning. (a) A person commits the crime of criminally negligent burning if with criminal negligence he damages property of another by fire or explosion.

(b) Criminally negligent burning is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.450. Failure to control or report a dangerous fire. (a) A person commits the crime of failure to control or report a dangerous fire if he knows that a fire is endangering life or a substantial amount of property of another and fails to take reasonable measures to put out or control the fire, when he can do so without substantial risk to himself, or to give a prompt fire alarm if

(1) he knows that he is under an official, contractual, or other legal duty to prevent or combat the fire; or

(2) the fire was started by him, with his consent, or on property in his custody or control.

(b) Failure to control or report a dangerous fire is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Sec. 11.46.480. Criminal mischief in the first degree. (a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with a service deals with or tamper with substantial

(2) with dangerous exceeding facility.

(b) Criminal 166 SLA

Cross reference destructive 34.50.020

Sec. commit no right

(1) with of another

(2) with airplane loss of

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(Effective January 1, 1980)

(1) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization which deals with emergencies involving danger to life or property, he damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(2) with intent to damage property of another by the use of widely dangerous means, he damages property of another in an amount exceeding \$100,000 by the use of widely dangerous means; or

(3) he intentionally damages an oil or gas pipeline or supporting facility.

(b) Criminal mischief in the first degree is a class B felony. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.50.020. Am. Jur. reference. — 34 Am. Jur., Malicious Mischief, § 1 et seq.

Sec. 11.46.482. Criminal mischief in the second degree. (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with intent to damage property of another, he damages property of another in an amount of \$500 or more;

(2) he tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;

(3) he recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means; or

(4) he drives, tows away, or takes the propelled vehicle of another and damages the vehicle in an amount of \$500 or more or causes the owner to incur reasonable expenses of \$500 or more as a result of the loss of use of the vehicle.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.50.020. Am. Jur. reference. — 34 Am. Jur., Malicious Mischief, § 1 et seq.

Sec. 11.46.484. Criminal mischief in the third degree. (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe he has such a right.

(1) with intent to damage property of another, he damages property of another in an amount of \$50 or more but less than \$500;

(2) he drives, tows away, or takes the propelled vehicle of another; or

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle by which he has agreed to return the

(Effective January 1, 1980)

vehicle to the owner at a specified time, he knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement.

(b) Criminal mischief in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.50.020. **Am. Jur. reference.** — 34 Am. Jur., Malicious Mischief, § 1 et seq.

Sec. 11.46.486. Criminal mischief in the fourth degree. (a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe he has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, he tampers with property of another;

(2) with intent to damage property of another, he damages property of another in an amount less than \$50; or

(3) he rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of § 482(a)(4) or 484(a)(2) of this chapter.

(b) Criminal mischief in the fourth degree is a class B misdemeanor. (§ 4 ch 166 SLA 1978)

Cross reference. — As to liability for destruction of property by minors, see AS 34.50.020. **Am. Jur. reference.** — 34 Am. Jur., Malicious Mischief, § 1 et seq.

Sec. 11.46.488. Littering. (a) A person commits the offense of littering if without permission he places or throws litter on any public or private property or in any public or private waters and does not immediately remove it.

(b) As used in this section, "litter" means any rubbish, refuse, or debris of whatever kind or description, whether or not it is of value.

(c) Littering is a violation. (§ 4 ch 166 SLA 1978)

Cross reference. — As to posting of law against littering, see AS 19.17.010.

Sec. 11.46.490. Definitions. AS used in §§ 400—490 of this chapter, unless the context requires otherwise,

(1) "oil or gas pipeline or supporting facilities" means real property or tangible personal property used in the exploration for, production or refining of, or pipeline transportation of oil, gas, or gas liquids, except for property used solely in the retail distribution of oil or gas;

(2) "tamper" means to interfere with something improperly, meddle with it, or make unwarranted alterations to its existing condition;

Sec. 11.46.320. Criminal trespass in the first degree. (a) A person commits the crime of criminal trespass in the first degree if he enters or remains unlawfully

- (1) on land with intent to commit a crime on the land; or
- (2) in a dwelling.

(b) Criminal trespass in the first degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 12 ch 102 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 21, 1980, substituted "land" for "real property" at the beginning of paragraph (1) in subsection (a), and substituted "the land" for "that real property" near the end of paragraph (1) in subsection (a).

Legislative history report. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

Article 3. Arson, Criminal Mischief, and Related Offenses.

Section

- 482. Criminal mischief in the second degree
- 484. Criminal mischief in the third degree
- 488. [Repealed]

Sec. 11.46.400. Arson in the first degree.

For cases construing former first degree arson statute, etc.

In accord with original. See *Stunbaugh v. State*, Sup. Ct. Op. No. 1919 (File No. 3937), 599 P.2d 166 (1979).

For case construing former second degree arson statute, etc.

In accord with original. See *Jacynth v. State*, Sup. Ct. Op. No. 1829 (File No. 3507), 593 P.2d 263 (1979).

Sec. 11.46.480. Criminal mischief in the first degree.

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

Sec. 11.46.481. Criminal mischief in the second degree. (a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe he has such a right,

- (1) with intent to damage property of another, he damages property of another in an amount of \$500 or more;
 - (2) he tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter with reckless disregard for the risk of harm to or loss of the property;
 - (3) he recklessly creates a risk of damage in an amount exceeding \$100,000 to property of another by the use of widely dangerous means;
- or

(4) and the owner vehicle (b) ch 166

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(4) he drives, tows away, or takes the propelled vehicle of another and the vehicle or any other property of another is damaged or the owner incurs reasonable expenses as a result of the loss of use of the vehicle in a total amount of \$500 or more.

(b) Criminal mischief in the second degree is a class C felony. (§ 4 ch 166 SLA 1978; am § 13 ch 102 SLA 1980)

Effect of amendment. — The 1980 amendment, effective June 21, 1980, rewrote paragraph (4) in subsection (a).

Legislative history report. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 4, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 29, 1980.

For case construing former AS 11.20.520, making malicious destruction

of property a crime, see *Hensel v. State*, Sup. Ct. Op. No. 1983 (File No. 2432), 604 P.2d 222 (1979).

For case construing former AS 11.20.525, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

Stated in *Wertz v. State*, Sup. Ct. Op. No. 2069 (File No. 4683), 611 P.2d 8 (1980).

Sec. 11.46.484. Criminal mischief in the third degree. (a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe he has such a right

(1) with intent to damage property of another, he damages property of another in an amount of \$50 or more but less than \$500;

(2) he drives, tows away, or takes the propelled vehicle of another;

(3) having custody of a propelled vehicle under a written agreement with the owner of the vehicle by which he has agreed to return the vehicle to the owner at a specified time, he knowingly retains or withholds possession of the vehicle without the consent of the owner for so long a period beyond the time specified as to render the retention or possession of the vehicle an unreasonable deviation from the agreement; or

(4) he tampers with a fire protection device in a building, which is a public place.

(b) Criminal mischief in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978; am § 1 ch 18 SLA 1979)

Effect of amendment. — The 1979 amendment added paragraph (4) to subsection (a).

For case construing former AS 11.20.521, making stealing, removing or damaging parts of an aircraft a crime, see *Catlett v. State*, Sup. Ct. Op. No. 1752 (File No. 3213), 585 P.2d 553 (1978).

For case construing former AS 28.35.010, prohibiting driving a vehicle without owner's consent, see *State v. G.L.P.*, Sup. Ct. Op. No. 1786 (File No. 2978), 590 P.2d 65 (1979); *Bell v. State*, Sup. Ct. Op. No. 1885 (File No. 3612), 598 P.2d 908 (1979).

(Effective January 1, 1980)

(3) "utility" means an enterprise, whether publicly or privately owned or operated, which provides gas, electric, steam, water, sewer, or communications service, and any common carrier;

(4) "widely dangerous means" means any difficult-to-confine substance, force, or other means capable of causing widespread damage, including fire, explosion, avalanche, poison, radioactive material, bacteria, collapse of a building, or flood. (§ 4 ch 166 SLA 1978)

Article 4. Forgery and Related Offense.

<p>Section - 500. Forgery in the first degree 505. Forgery in the second degree - 510. Forgery in the third degree 520. Criminal possession of a forgery device 530. Criminal simulation</p>	<p>Section 540. Obtaining a signature by deception 550. Offering a false instrument for recording 570. Criminal impersonation - 580. Definitions</p>
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Sec. 11.46.500. Forgery in the first degree. (a) A person commits the crime of forgery in the first degree if he violates § 510 of this chapter and the written instrument is or purports to be

(1) part of an issue of money, securities, postage, revenue stamps, or other valuable instruments issued by a government or governmental agency; or

(2) part of an issue of stock, bonds, or other instruments representing interests in or claims against an organization or its property.

(b) Forgery in the first degree is a class B felony. (§ 4 ch. 166 SLA 1978)

For cases construing former law relating to forgery and counterfeiting, see notes AS 11.46.505 and AS 11.46.510.

Sec. 11.46.505. Forgery in the second degree. (a) A person commits the crime of forgery in the second degree if he violates § 510 of this chapter and the instrument is or purports to be

(1) a deed, will, codicil, contract, assignment, negotiable or other commercial instrument, or other document which does or may evidence, create, transfer, alter, terminate, or otherwise affect a legal right, interest, obligation, or status; or

(2) a public record.

(b) Forgery in the second degree is a class C felony. (§ 4 ch 166 SLA 1978)

Editor's note. — The cases cited in the note below were decided under former AS 11.25.010 and 11.25.020.

As to forgery generally, see note to AS 11.46.510.

Where defendant presented two checks for payment and was guilty of obtaining money by false pretenses and forgery, even though the separate counts for each check represented two distinct acts (the

(Effective January 1, 1980)

forgery of the endorsement and the presentation of the check for payment), the conduct as to each check constitutes one transaction with a single intent to defraud; therefore, duplicate sentencing is illegal. Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977).

Evidence showing probable cause. — For evidence showing probable cause for the belief that person using credit card was guilty of forgery or uttering a forged instrument, see McCoy v. State, Sup. Ct. Op. No. 750 (File No. 1316), 491 P.2d 127 (1971).

Testimony supported inference that defendant lacked authority to sign and cash check. — See Martin v. State, Sup. Ct. Op. No. 991 (File No. 1820), 517 P.2d 1399 (1974).

Sentence of 18 months for attempting to pass forged check with intent to defraud held not excessive. — See Perrin v. State, Sup. Ct. Op. No. 1213 (File No. 2572), 543 P.2d 413 (1975).

Sentence held excessive. — Where defendant was guilty of obtaining money

by false pretenses and forgery based on the presentation of two checks, the sentence of 15 years is excessive. The judge was clearly mistaken in imposing such a lengthy sentence. Black v. State, Sup. Ct. Op. No. 1506 (File No. 3327), 569 P.2d 804 (1977).

For cases construing former statute relating to forgery of record or certificate and uttering forged instrument, see Brandon v. United States, 13 Alas. 372, 190 F.2d 175 (9th Cir. 1951); Ing. v. United States, 278 F.2d 362 (9th Cir. 1960); Chambers v. State, Sup. Ct. Op. No. 237 (File No. 416), 394 P.2d 778 (1964); McCoy v. State, Sup. Ct. Op. No. 750 (File No. 1316), 491 P.2d 127 (1971).

Am. Jur., ALR and C.J.S. references. — 14 Am. Jur., Counterfeiting, § 1 et seq.; 23 Am. Jur., Forgery, § 1 et seq.

Altering receipt, etc., 25 ALR 1058.

Filling in blanks, 87 ALR 1169.

Altering written instrument to conform to actual intention, 93 ALR 864.

Bar of limitations, 137 ALR 293.

20 C.J.S., Counterfeiting, §§ 4 to 12. 37 C.J.S., Forgery, §§ 1 to 42.

Sec. 11.46.510. Forgery in the third degree. (a) A person commits the crime of forgery in the third degree if, with intent to defraud, he

- (1) falsely makes, completes, or alters a written instrument;
- (2) knowingly possesses a forged instrument; or
- (3) knowingly utters a forged instrument.

(b) Forgery in the third degree is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Editor's note. — Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970), cited below, was decided under former AS 11.25.020.

Sufficiency of evidence. — Evidence was sufficient to sustain defendant's conviction of the crime of forgery. Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

Common law. — Forgery, at the common law, is the false making or materially altering, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability. Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

What constitutes forgery. — The signing of a fictitious name to an instrument with fraudulent intent constitutes forgery. Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

The crime of forgery can be committed by signing an instrument in a fictitious or assumed name with intent to defraud, even though the statute under which the prosecution is brought makes no specific reference to the use of a fictitious or assumed name. Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

The signing of a fictitious name, with fraudulent intent, is as much a forgery as if the name used was that of an existing person. The public mischief, i.e., the legal tendency to defraud, is equally great in either event. Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

The essential elements of forgery are (1) false making of some instrument in writing; (2) a fraudulent intent; (3) an instrument apparently capable of effecting a fraud. Morrison v. State, Sup. Ct. Op. No. 609 (File No. 1139), 469 P.2d 125 (1970).

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to defraud, he causes another to sign or execute a written instrument by deception.

(b) Obtaining a signature by deception is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

ALR reference. — Procuring signature by fraud, 14 ALR 316.

Sec. 11.46.550. Offering a false instrument for recording. (a) A person commits the crime of offering a false instrument for recording if, knowing that a written instrument relating to or affecting property or directly affecting a contractual relationship contains a false statement of false information, and with intent to defraud, he presents or offers it to a public office or a public servant intending that it be registered, filed, or recorded or become a part of the records of that public office or public servant.

(b) Offering a false instrument for recording is a class C felony. (§ 4 ch 166 SLA 1978)

Proof of forgery by showing instruments presented for recording. — The state proved the uttering or publishing of forged instruments by showing that they were presented to the recording office with a representation that they were genuine. *Chambers v. State*, Sup. Ct. Op. No. 237

(File No. 416), 394 P.2d 778 (1964), cert. denied, 379 U.S. 971, 85 S. Ct. 669, 13 L. Ed. 2d 563 (1965), overruled on other grounds in *Whitton v. State*, Sup. Ct. Op. No. 661 (File No. 1153), 479 P.2d 302 (1970), decided under provisions of § 65-6-1 ACLA 1949.

Sec. 11.46.570. Criminal impersonation. (a) A person commits the crime of criminal impersonation if he

(1) assumes a false identity and does an act in his assumed character with intent to defraud; or

(2) pretends to be a representative of some person or organization and does an act in his pretended capacity with intent to defraud.

(b) Criminal impersonation is a class A misdemeanor. (§ 4 ch 166 SLA 1978)

Cross reference. — As to impersonating a public servant, see AS 11.56.830.

ALR reference. — Use of fictitious or assumed name, 9 ALR 407.

Sec. 11.46.580. Definitions. (a) In §§ 500 — 580 of this chapter, unless the context requires otherwise.

(1) to "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or any other manner, so that the instrument so altered falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

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(2) to "falsely complete" a written instrument means to transform, by adding, inserting, or changing matter, an incomplete written instrument into a complete one without the authority of anyone entitled to grant it, so that the complete written instrument falsely appears or purports to be in all respects an authentic creation of its ostensible maker or authorized by him;

(3) to "falsely make" a written instrument means to make or draw a complete or incomplete written instrument which purports to be an authentic creation of its ostensible maker, but which is not, either because the ostensible maker is fictitious or because, if real, he did not authorize the making or drawing of the instrument.

(b) In §§ 500 — 580 of this chapter,

(1) "forged instrument" means a written instrument which has been falsely made, completed, or altered;

(2) "utter" means to issue, deliver, publish, circulate, disseminate, transfer, or tender a written instrument or other object to another;

(3) "written instrument" means a paper, document, instrument, electronic recording, or article containing written or printed matter or the equivalent, whether complete or incomplete, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege, or identification, which is capable of being used to the advantage or disadvantage of some person. (§ 4 ch 166 SLA 1978)

Article 5. Business and Commercial Offenses.

Section

600. Scheme to defraud
620. Misapplication of property
630. Falsifying business records
660. Commercial bribe receiving
670. Commercial bribery

Section

710. Deceptive business practices
720. Misrepresentation of use of a propelled vehicle
730. Defrauding creditors

Sec. 11.46.600. Scheme to defraud. (a) A person commits the crime of scheme to defraud if he

(1) engages in conduct constituting a scheme

(A) to defraud five or more persons;

(B) to obtain property or services from five or more persons by false or fraudulent pretense, representation, or promise; or

(C) to obtain \$10,000 or more from one or more persons; and

(2) obtains property or services in accordance with the scheme.

(b) Scheme to defraud is a class B felony. (§ 4 ch 166 SLA 1978)

Sec. 11.46.620. Misapplication of property. (a) A person commits the crime of misapplication of property if he knowingly misapplies property that has been entrusted to him as a fiduciary or that is property of the government or a financial institution.

Sec. 11.81.630. Intoxication as a defense.

DECISIONS UNDER PRIOR LAW

Intoxication considered as to specific intent. — Under former AS 11.70.030, intoxication could be considered as to intent only when the intent required was so-called specific intent. *Kimoktoak v. State*, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

And where purpose or motive was criminal element. — Former AS 11.70.030 permitted a jury to consider intoxication where purpose or motive was an element of the crime charged. *Kimoktoak v. State*, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

Knowledge. — Where one is charged with failure to render assistance under AS 28.35.060, and where there is evidence of intoxication, the jury may consider the fact that the accused was intoxicated in

determining whether he had the requisite knowledge. *Kimoktoak v. State*, Sup. Ct. Op. No. 1704 (File No. 3177), 584 P.2d 25 (1978).

State of mind created, etc.

The concept of voluntariness in intoxication-as-defense statute is separate from an insanity defense which contemplates relief from criminal responsibility for lack of substantial capacity. The compulsion to drink which results from chronic alcoholism should not be a question of "voluntariness" under the intoxication-as-defense statute, but it should be considered in determining whether an insanity defense is applicable. *O'Leary v. State*, Sup. Ct. Op. No. 2003 (File No. 3466), P.2d (1979).

Article 6. Definitions.

Section

900. Definitions

Sec. 11.81.900. Definitions.

(b) As used in this title, unless otherwise specified or unless the context requires otherwise,

(1) "affirmative defense" means that

(A) some evidence must be admitted which places in issue the defense; and

(B) the defendant has the burden of establishing the defense by a preponderance of the evidence;

(2) "benefit" means a present or future gain or advantage to the beneficiary or to a third person pursuant to the desire or consent of the beneficiary;

(3) "building", in addition to its usual meaning, includes any propelled vehicle or structure adapted for overnight accommodation of persons or for carrying on business; when a building consists of separate units, including apartment units, offices, or rented rooms, each unit is considered a separate building;

(4) "cannabis" has the meaning ascribed to it in AS 17.12.150;

(5) "conduct" means an act or omission and its accompanying mental state;

(6) "controlled substance" means

(A) a narcotic drug as defined in AS 17.10.230; or

(31) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(32) "nondeadly force" means force other than deadly force;

(33) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(34) "official detention" means custody, arrest, surrender in lieu of arrest, or confinement under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(35) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(36) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(37) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, society, union, club, church, or any other group of persons organized for any purpose;

(38) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(39) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(40) "physical injury" means a physical pain or an impairment of physical condition;

(41) "possess" means having physical possession or the exercise of dominion or control over property;

(42) "premises" means real property and any building;

(43) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(44) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property, real property, a credit card, choses-in-action, and evidence of debt or of contract, a commodity of public utility such as gas, electricity, steam, or water constitutes property but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(45) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence:

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(46) "public record" means a document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture, film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card or other document of any other material, regardless of physical form or characteristic, developed or received under law or in connection with the transaction of official business and preserved or appropriate for preservation by any agency, municipality, or any body subject to the open meeting provision of AS 44.62.310, as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the state or municipality or because of the informational value in it; it also includes staff manuals and instructions to staff that affect the public;

(47) "public servant" means each of the following, whether compensated or not, but does not include jurors or witnesses:

(A) an officer or employee of the state, a municipality or other political subdivision of the state, or a governmental instrumentality of the state, including legislators, members of the judiciary, and peace officers;

(B) a person who participates as an advisor, consultant, or assistant at the request or direction of the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(C) a person who serves as a member of the board or commission created by statute or by legislative, judicial, or administrative action by the state, a municipality or other political subdivision of the state, or a governmental instrumentality;

(D) a person nominated, elected, appointed, employed, or designated to act in a capacity defined in (A) — (C) of this paragraph, but who does not occupy the position;

(48) a "renunciation" is not "voluntary and complete" if it is substantially motivated, in whole or in part, by

(A) a belief that circumstances exist which increase the probability of detection of apprehension of the defendant or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(B) a decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective;

(49) "serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health, or protracted loss or impairment of the function of a body member or organ, or physical injury which unlawfully terminates a pregnancy;

(50) "services" includes labor, professional services, transportation, telephone or other communications service, entertainment, the supplying of food, lodging, or other accommodations in hotels, restaurants, or elsewhere, admission to exhibitions, and the supplying of equipment for use;

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PROPOSED AMENDMENT TO PROPOSED CSHB 428

Page 1, ls. 12-15.

Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGATION. (a) A person may not file an action seeking to review state action on a license or permit for the construction or operation of a facility, or a disposal of interest in state land, unless the person

Page 1, l. 26.

license or permit for the construction or operation of a facility, or a disposal of an interest in state land, whether or

Page 2, ls. 2-3.

require a person seeking to review state action on a license or permit for the construction or operation of a facility, or a disposal of an interest in state land, to furnish security in the

Insert new Sec. 09.50.510 (1), and renumber existing subsections:

(1) "facility" means any onshore or offshore structure, improvement or land use, including the exploration for or extraction of minerals, and the harvesting of timber or other natural resources;

Page 3, ls. 17-18

tion, or conditioning of a state license or permit for the construction or operation of a facility, and the disposal of an interest in state land.

1 PROPOSED JUDICIARY CS
2 HOUSE BILL NO. 428
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to litigation involving state
7 actions; and amending Rules 602 and 603 of the Rules
8 of Appellate Procedure."

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

10 * Section 1. AS 09.50 is amended by adding new sections to read:

11 ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

12 Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGA-
13 TION. (a) A person may not file an action seeking to review state
14 action on a license, permit or disposal of an interest in state land
15 unless the person

16 (1) has raised and supported the issues presented to the
17 agency charged with the responsibility for the state action at each
18 available opportunity, and has requested the state agency to undertake
19 the alternative action sought;

20 (2) demonstrates that the state action will cause non-
21 speculative personal injury in fact to that person and that
22 substantial likelihood of the injury exists; and

23 (3) files a timely notice of appeal of the state action
24 under Rule of Appellate Procedure 602. An action for declaratory or
25 injunctive relief is not available to review state action on a
26 license, permit or disposal of an interest in state land, whether or
27 not the person was a party to the administrative proceeding.

28 (b) The requirements of (a) of this section are jurisdictional.

29 Sec. 09.50.460. MOTION FOR SECURITY. (a) Upon motion, and

1 except as provided in Rule of Appellate Procedure 209, the court shall
2 require a person seeking to review state action on a license, permit
3 or disposal of an interest in state land to furnish security in the
4 amount determined under AS 09.50.470, unless the person demonstrates a
5 substantial likelihood of prevailing on the appeal. Security under
6 this subsection shall be in lieu of the bond required by Rules of
7 Appellate Procedure 602(c) and 603(a).

8 (b) A motion under this section shall be made within 30 days of
9 the service on the state of the notice of appeal served under Rule of
10 Appellate Procedure 602.

11 (c) Within 30 days after an order of a court granting interven-
12 tion by the proposed permittee, licensee or recipient as an appellee
13 in an appeal of state action, the intervenor may bring a motion under
14 this section.

15 (d) For good cause the court may extend the 30-day period under
16 (b) or (c) of this section for not more than 30 additional days.

17 (e) If security required under this section is not furnished
18 within a reasonable time as determined by the court, the appeal shall
19 be dismissed.

20 Sec. 09.50.470. AMOUNT OF SECURITY. (a) The court shall set
21 the amount of security requested by AS 09.50.460 taking into account

22 (1) damages which the moving party will sustain if delays
23 occasioned by the appeal cause a breach of a contract or agreement
24 entered into in good faith before the appeal was filed;

25 (2) extra costs which may be incurred by the moving party
26 through inflation due to delay caused by pendency of the appeal; and

27 (3) other costs and damages which the moving party can show
28 may occur as the result of the appeal, which shall include the costs
29 of the appeal and attorney's fees.

1 (b) The amount of security set by the court may be changed from
2 time to time in the discretion of the court, upon a motion showing
3 that the security is excessive or inadequate. If a person fails to
4 furnish additional security required by the court within a reasonable
5 time as determined by the court, the appeal shall be dismissed.

6 Sec. 09.50.480. DISPOSITION OF SECURITY. When the appeal is
7 terminated, the court shall dispose of the security furnished under
8 AS 09.50.460 in accordance with the outcome of the appeal.

9 Sec. 09.50.500. STAY OF PROCEEDINGS. A motion for security made
10 under AS 09.50.460 has the effect of staying proceedings in the appeal
11 until the motion is disposed of.

12 Sec. 09.50.510. DEFINITIONS. In AS 09.50.450 - 09.50.520

13 (1) "state" includes a state department or agency in the
14 executive branch, and a state board or commission;

15 (2) "state action" means an act done by or a decision made
16 by the state, including the granting, denial, suspension, qualifica-
17 tion, or conditioning of a state license or permit, and the disposal
18 of an interest in state land.

19 * Sec. 2. Section 1 of this Act has the effect of amending Rules 602
20 and 603 of the Rules of Appellate Procedure by changing the procedures on
21 certain appeals and bonds on appeal.
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Original sponsor: Metcalfe

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 428 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to litigation involving state actions;
7 and amending Rules 602 and 603 of the Rules of Appellate
8 Procedure."

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

10 * Section 1. AS 09.50 is amended by adding new sections to read:

11 ARTICLE 7. LITIGATION INVOLVING STATE ACTION.

12 Sec. 09.50.450. CONDITIONS PRECEDENT TO MAINTENANCE OF LITIGATION.

13 (a) A person may not file an action seeking to review state action on a
14 license or permit for the construction or operation of a facility or a
15 disposal of an interest in state land unless the person

16 (1) has raised and supported the issues presented to the
17 agency charged with the responsibility for the state action at each
18 available opportunity, and has requested the state agency to undertake
19 the alternative action sought;

20 (2) demonstrates that the state action will cause nonspecula-
21 tive injury in fact to that person and that substantial likelihood of
22 the injury exists; and

23 (3) files a timely notice of appeal of the state action under
24 Rule 602, Rules of Appellate Procedure.

25 (b) An action for declaratory or injunctive relief is not available
26 to review state action on a license or permit for the construction or
27 operation of a facility, or a disposal of an interest in state land,
28 whether or not the person who seeks review was a party to a previous
29 administrative proceeding on the license, permit or disposal.

1 (c) The requirements of (a) and (b) of this section are juris-
2 dictional.

3 Sec. 09.50.460. MOTION FOR SECURITY. (a) Upon motion the court
4 shall require a person seeking to review state action on a license or
5 permit for the construction or operation of a facility, or a disposal of
6 an interest in state land to furnish security in the amount determined
7 under AS 09.50.470, unless the person demonstrates a substantial likeli-
8 hood of prevailing on the appeal. Security under this subsection is in
9 place of the bond required by Rules 602(c) and 603(a), Rules of Appellate
10 Procedure.

11 (b) A motion under this section shall be made within 30 days of
12 the service on the state of the notice of appeal served under Rule 602,
13 Rules of Appellate Procedure.

14 (c) Within 30 days after an order of a court granting intervention
15 by the proposed permittee, licensee, or recipient as an appellee in an
16 appeal of state action, the intervenor may bring a motion under this
17 section.

18 (d) For good cause the court may extend the 30-day period under
19 (b) or (c) of this section for not more than 30 additional days.

20 (e) If security required under this section is not furnished
21 within a reasonable time as determined by the court, the appeal shall be
22 dismissed.

23 Sec. 09.50.470. AMOUNT OF SECURITY. (a) The court shall set the
24 amount of security requested by AS 09.50.460 taking into account

25 (1) damages that the moving party will sustain if delays
26 occasioned by the appeal cause a breach of a contract or agreement
27 entered into in good faith before the appeal was filed;

28 (2) extra costs that may be incurred by the moving party
29 through inflation due to delay caused by pendency of the appeal; and

1 (3) other costs and damages that the moving party can show
2 may occur as the result of the appeal, which shall include the costs of
3 the appeal and attorney fees.

4 (b) The amount of security set by the court may be changed from
5 time to time in the discretion of the court, upon a motion showing that
6 the security is excessive or inadequate. If a person fails to furnish
7 additional security required by the court within a reasonable time as
8 determined by the court, the appeal shall be dismissed.

9 Sec. 09.50.480. DISPOSTION OF SECURITY. When the appeal is termi-
10 nated, the court shall dispose of the security furnished under AS 09.50.-
11 460 in accordance with the outcome of the appeal.

12 Sec. 09.50.500. STAY OF PROCEEDINGS. A motion for security made
13 under AS 09.50.460 has the effect of staying proceedings in the appeal
14 until the motion is disposed of.

15 Sec. 09.50.510. DEFINITIONS. In AS 09.50.450 - 09.50.510

16 (1) "facility" means any onshore or offshore structure,
17 improvement, or land use, including the exploration for or extraction of
18 minerals, and the harvesting of timber or other natural resources;

19 (2) "state" includes a state department or agency in the
20 executive branch, and a state board or commission;

21 (3) "state action" means an act done by or a decision made by
22 the state, including the granting, denial, suspension, qualification, or
23 conditioning of a state license or permit for the construction or opera-
24 tion of a facility, and the disposal of an interest in state land.

25 * Sec. 2. Section 1 of this Act has the effect of amending Rules 602 and
26 603, Rules of Appellate Procedure, by changing the procedures on certain
27 appeals and bords on appeal.

Alaska State Legislature



House of Representatives
RAY METCALFE

POUCH V
JUNEAU, ALASKA 99811

P.O. BOX 4-2766
ANCHORAGE, ALASKA 99509

19 January 1982

Honorable Ramona Barnes
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Re: HB 428

Dear Ramona:

I am proposing legislation to curb the abuse of our legal system by those who consistently bring frivolous and often unfounded environmental suits merely for the purpose of burdening and/or destroying our State's industry. Most of these suits stem from activity on or around State lands or resources: roads that cross public lands, mining or timber-cutting rights on public lands, and numerous other areas.

The enclosed legislation would require that anyone wishing to bring such action would first be required to show that they were somehow being directly affected by the activity the suit action would delay.

In the absence of being able to demonstrate direct effect, the party bringing the suit would be required to post bond or other security in an amount sufficient to cover the damages and losses that may be suffered by others as the result of actions brought.

I have enclosed comments which were made by others when I introduced similar legislation during the last legislature for your review.

As you can see, there is considerable sentiment for this legislation. The scheduling of a hearing on this bill would be greatly appreciated.

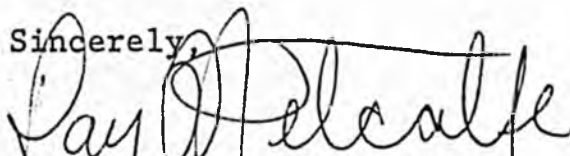
Rep. Ramona Barnes

- 2 -

19 January 1982

Please arrange for approximately two weeks' advance notice to enable me to notify all those who wish to provide testimony on this issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ray H. Metcalfe". The signature is written in dark ink and is positioned above the typed name and title.

Ray H. Metcalfe
Chairman, State Affairs Committee

RHM/emc
Enclosures



SIERRA CLUB LEGAL DEFENSE FUND, INC.

Juneau, Alaska
Ansel Adams

Ansel Adams

419 6th Street Suite 321 Juneau, Alaska 99801 (907) 586-2751

SAN FRANCISCO OFFICE

Fredric P. Sutherland
Executive Director

Laurens H. Silver
Michael R. Sherwood
Julie E. McDonald
Staff Attorneys

Walter Parker
Litigation Coordinator

Paula Carroll
Assistant Litigation Coordinator

Deborah S. Reames
Legal Assistant

111 California St.
Suite 311
San Francisco, CA 94104
(415) 398-1411

ROCKY MOUNTAIN OFFICE

William S. Curtis
Staff Attorney

135 Republic Building
1612 Tremont Place
Denver, CO 80202
(303) 892-6301

WASHINGTON, D.C. OFFICE

Frederick S. Middleton, III
Carin P. Sheldon
Howard I. Fox
Staff Attorneys

1424 K St., NW
Suite 600
Washington, D.C. 20005
(202) 347-1770

ALASKA OFFICE

Staff Attorney

419 6th St.
Suite 321
Juneau, AK 99801
(907) 586-2751

December 15, 1980

Editor
Juneau Empire
235 2nd Street
Juneau, Alaska 99801

Editor:

In your story on Haines in Friday's paper you report Mr. Schnabel saying that his workers have been laid off and his mill closed because of economic conditions in Asia and the SEACC lawsuit. This is as ludicrous as it is untrue. The lawsuit to protect the eagles has had absolutely no effect on Mr. Schnabel's mill. Indeed, even the casual observer could tell from the outset that the case had only the slightest chance of being won. It was a valiant effort to protect the eagles (with relatively minor changes in Schnabel's contract), but it was a long shot from the very beginning. Schnabel is merely looking for a scapegoat. The citizens of Haines who want to diversify their economy and attract tourists should be wary of Schnabel and others of his ilk.

Durwood J. Zaelke
Durwood J. Zaelke

(Ed. Note: Mr. Zaelke recently took over the Sierra Club Legal Defense Fund office in Juneau. Prior to that he served as a Special Litigation Attorney in the Justice Department in Washington, D.C., where he headed the Love Canal investigation of Hooker Chemical Co., as well as the Justice Department investigation of the Three Mile Island accident.)

DJZ/lw
cc: Mr. Schnabel

Schnabel Lumber Company



P.O. Box 595

Haines, Alaska 99827

Tel. (907) 766-2511

December 22, 1980

Editor

Alaska Juneau Empire

235 2nd Avenue

Juneau, Alaska 99801

Dear Editor:

I am dismayed as I read Mr. Zaelke's letter in your paper portraying me as a liar and that, "the citizens of Haines who wish to diversify the Haines economy should be wary of me and others of my ilk." - as if I am a leper or criminal. I have and will continue to push for a diversified economy as I owned a 40 unit Apartment-Motel complex in Haines for over 20 years. My name was the second on a petition to establish the present Eagle Sanctuary - a petition I helped formulate. I spent hundreds of hours of my time and thousands of dollars of my money in pushing for the establishment of the ferry system - all these things aimed at broadening the economic base in Haines, especially in tourism.

Contrary to what Mr. Zaelke writes, the SEAC Lawsuit has had a devastating effect on the Schnabel Mill. No one wants to work for a company with an uncertain future. We need qualified people of proven expertise and we cannot woo them away from their present employers as long as the SEAC group has the right to appeal. The \$3,600,000 funding for the 5,000 KVA wood waste electrical generating plant cannot be obtained until the litigation is settled. (See enclosure). The export lumber market requires a high quality product. The Haines forest is a low quality second growth stand that will not meet the export grade requirements. Therefore, to meet the market requirements and to provide the additional log volumes needed to run a full shift on a year round basis, it is necessary to purchase USFS timber sales. Due to the lawsuit we have been unable to purchase any USFS timber because bonding companies have refused to bond any sale until the litigation is settled. (See enclosure).

In December of 1979 we were awarded the USFS Broken Key sale on Tuxecan Island. We searched all markets, domestic and foreign for a timber sale bond. In August of 1980 the Forest Service notified us the contract would have to be cancelled for failure to provide the bond. We currently hold the award on the Gilbert Bay timber sale but are unable to obtain a bond due to the litigation. Should we fail we are subject to our bid deposit of \$55,000.00 being forfeited. Mr. Zaelke says, "This is ludicrous as it is untrue." My position is documented while Mr. Zaelke's is a pipe dream. As an attorney he is a disgrace to his profession. Mr. Zaelke's statement, "Even the casual observer could tell from the outset that the case had only the slightest chance of being won," leads me to believe it is nothing more than the usual ENVIRONMENTAL nuisance suit designed to harass, to disrupt and delay at any cost and in any community no matter how small.

Editor
Alaska Juneau Empire
December 22, 1980
Page 2

Mr. Zaelke's arrival on the Alaskan scene, pen in hand, ready to slash at anyone who is a productive citizen, especially those trying to preserve our free enterprize system as well as the individual freedom such as Mr. Zaelke enjoys, leads me to question his motivation towards and loyalty to the principals upon which this country is founded.

Mr. Zaelke states that the lawsuit seeks, "relatively minor changes in Schnabel's contract." The Post Trail Briefs spells out the issue, "the State decision to fix the annual volume at 10.2 million feet was arbitrary, capricious, and an abuse of discretion." The allowable cut was improperly calculated. The rotation age on old growth volume and second growth volume has no rationale. These charges were not minor - they sought to cancel the entire contract.

Article 4 Sec. 8 of the State Constitution provides for, "Fish, Forest, wildlife and grasslands shall be utilized, developed, and maintained on the sustained yield principal, subject to preference among beneficial users." The people of Haines voted a sales tax to provide funding to defend their rights to this resource. That action speaks for itself as a preference.

The value of Mr. Zaelke's letter may be that it will help awaken people to the unreasonableness of the ENVIRONMENTALIST position. Mr. Zaelke does not consider people as a national resource. Mr. Zaelke advertizes irresponsibility. It may help do away, legislatively, the use of Intervenor funding and it may help lead to laws being formulated that require bonding for such suits that when taken to court, will protect the defendant and allow the defendant to be reimbursed for the costs and losses inflicted upon him and the affected community.

Yours truly,

John J. Schnabel
President

S/j

Enclosures



CORROON & BLACK/DAWSON & CO., INC.

2011 - Second Avenue
P.O. Box C-34201
Seattle, Washington 98124
206-583-2300 Telex: 32-0215

October 21, 1980

Mr. John Schnabel
Schnabel Lumber Company
Post Office Box 595
Haines, Alaska 99827.

Re: U.S. Forest Service Timber Sale 02-519

Dear John:

We have carefully reviewed the information submitted on October 16 in regard to the bond required.

John, I am sorry to advise that due to the current litigation, we cannot provide the bond required.

The bonding companies have advised that any bond requests will be denied until the issue before the court is settled.

We are confident that when the legal issue is settled, we will be able to provide you with the bonds you need and, in our opinion, deserve.

Sincerely,

Durand R. Eaton

lm

RECEIVED
SCHNABEL LBR. C.

OCT 21 1980

HAINES, ALASKA

Original sponsor: Rules Committee

Offered: 5/23/80
Referred: Finance

IN THE HOUSE

BY THE RESOURCES COMMITTEE

CS FOR HOUSE BILL NO. 1022

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act granting authority to the Alaska Renewable Resources Corporation to exceed investment limits by investing \$3,600,000 in Schnabel Lumber Company; and providing for an effective date."

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

* Section 1. It is the intent of the legislature that this bill fulfill the requirement of AS 37.12.080(b)(1).

* Sec. 2. The legislature finds that the Alaska Renewable Resources Corporation has had applications for an investment of \$3,600,000 in Schnabel Lumber Company, an Alaska corporation, for a waste wood high temperature boiler system. AS 37.12.080(b) states that no financial assistance of more than \$1,500,000 may be provided to a single project or applicant unless the legislature has approved the investment by concurrent resolution. The legislature further finds that approval of the investment may be in the public interest. Notwithstanding the provisions of AS 37.12.080(b) requiring approval by concurrent resolution, the investment in the amount of \$3,600,000 is approved for a waste wood high temperature boiler system and the corporation is authorized to make the proposed investment in Schnabel Lumber Company, an Alaska corporation, subject to the following conditions:

(1) that all proceeds of the financial assistance are deposited into a separate account for the exclusive expenditure on the waste wood high temperature boiler system and not for other purposes;

(2) that an agreement is concluded and signed guaranteeing the purchase of the electricity to be generated;

~~(3) that current litigation is resolved in a manner that does not~~

~~anger the investments.~~

(4) that Schnabel Lumber Company meets all other requirements of Alaska Renewable Resources Corporation;

(5) that the Alaska Renewable Resources Corporation completes its review and approves the investment.

Sec. 3. This Act takes effect immediately in accordance with AS 01.10.

(c).

SEAC prop
under present contract, to a point that the mill will close as
an annual cut of less than 2 million ft will remain.

CHILKAT VALLEY LAND PROTECTION PROPOSAL

The Southeast Alaska Conservation Council feels that the entire Chilkat Valley contains particularly significant, valuable, and unique natural resources and that the Valley's ecosystems should be maintained in its natural state as much as possible. SEACC proposes that certain State-owned lands in the Chilkat Valley be traded to the federal government in return for other federal lands of equal value being traded to the State.

The SEACC proposal calls for protection of lands in a Southwest Unit, which includes the State lands bounded on the north by the Klehini River and on the east by the Chilkat River, and a Northern Extension Unit, which includes State lands in a corridor along the Chilkat River upstream of its confluence with the Klehini River.

The Southwest Unit stretches over 30 miles from the northern boundary of Tongass National Forest to the Canadian border on the Haines highway. It includes some of the most stunning mountain scenery in Alaska, moose, bear, and mountain goat habitat, prime wilderness and recreation lands, hundreds of miles of important anadromous fish spawning and rearing streams, and the principal areas used by the Chilkat eagle gathering. The Haines highway forms the northern boundary, but otherwise this unit is virtually roadless.

The Northern Extension extends along the main stem of the Chilkat River north of the Haines Highway bridge. This area is part of the USFWS 1971 proposed Chilkat National Bald Eagle Refuge Proposal. For the most part, the boundary follows the 500 foot contour elevation up the Chilkat and Tahini Rivers to the Canadian border. This unit protects mostly river-bottom lands including important salmon spawning and eagle nesting habitat. Additionally, winter moose and mountain goat range would be protected. Included in the area is important waterfowl nesting habitat and the southernmost nesting grounds of the trumpeter swan. These lands have a high recreational potential for hunting, fishing, berry picking, skiing, etc. A great deal of logging has already occurred in this section of the Chilkat and more is anticipated. The Northern Extension is expected to act as a buffer to help maintain water quality and productivity in the main stem of the Chilkat.