

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4834 HLAB HB 540 - HB 556

408

POSITION PAPER
HB 540

This bill adds a new article to Chapter 10 (Employment Practices and Working Conditions) of Title 23 (Labor and Workers' Compensation). The new article would guarantee that secret files could not be kept on an employee. An employee would be entitled to inspect and copy the employee's personnel file (subsection (a)). Employees would be prohibited from maintaining personnel information on an employee unless the information is placed in the employee's personnel file (subsection (b)). Violations are made a class A misdemeanor (subsection (c)). Employees and employers would be covered by the new provision (subsection (d)).

From a layperson's reading, it is unclear whether the State, as an employer, would be covered by this bill. "Employer" is defined in paragraph (d)(2) as "a person who employs one or more other persons" (emphasis added). As defined in AS 01.10.060(7), "person" does not include the "state" (as state is defined in AS 01.10.060(13)). When the state is included under other provisions of Title 23, it is specifically included. AS 23.10.037(c).

This position paper assumes the state will be covered by the provisions of HB 540. The question of "secret" personnel files has been of serious concern to the state and its employees. Over the years, the state and its employees have mutually agreed on the treatment of files. Collective bargaining contracts provide elaborate processes and procedures relating to personnel files. The state is undoubtedly in compliance with proposed subsection (a).

Subsection (b) presents considerable administrative problems for the state. While the official personnel file on employees in the classified and partially exempt service are maintained by the Division of Personnel, there is "information" about employees in virtually every office in the state. There is no desire, in fact opposition, by employees and management to keep that information in offices and not in the personnel file. To illustrate, suppose a supervisor verbally reprimands an employee for horseplay in a maintenance shop. In addition, the supervisor tells the employee and makes a note of the incident. The note is information to be used in preparing the next performance evaluation or to justify further constructive and progressive discipline should the offense be repeated. If there is no repeat of the offense, the performance evaluation may not even mention it, and the information is ultimately discarded.

In this example, the note is available for inspection and copying under subsection (a), but it is not placed in the employee's personnel file under subsection (b). It is the state's best interest and employee's best interest to maintain this kind of process.

Subsection (c) would make the state guilty of a class A misdemeanor for its current practices. Compliance with subsection (b) would have three results depending on individual responses from supervisors: some would create truly secret files in defiance of the proposed law; some would cease recording information or cease taking actions that should be recorded; and trivial

POSITION PAPER (continued)

information will be recorded and forwarded by the thousands to the Division of Personnel for placement in the employee's personnel file. Obviously, each of these results is undesirable.

If the state is to be covered by the provisions of HB 540, the Department of Administration must take a position in opposition to it. Administrative difficulties, the undesired results, and the disruption of mutually agreed processes with our employees are the reasons for our opposition.

for Michael P. Tom Fullin

Bruce Cummings, Director
Division of Labor Relations

3/17/88

Date

John M. Andrews

Commissioner John M. Andrews
Department of Administration

3/18/88

Date

H B

5 4 2

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House LRC:

March 29, 1988

March 31, 1988

December 27, 1987

Honorable H. A. Boucher
Alaska House of Representatives
PO Box 111038
Anchorage AK 99511

Dear Representative Boucher,

By now, I am sure you are aware of the December 11 closure of First Interstate Bank of Alaska. As an employee of First Interstate at the time of closing, several issues are of great concern to me. I would appreciate your help in looking into these matters, and will supply you with all the facts that are available to me.

As a state chartered bank, First Interstate was closed by the State Banking Commission and FDIC was appointed receiver of the bank. As such, FDIC is now administrator of the employees' 401K retirement plan. Approximately 150 employees are participants in the plan which is with Mutual of New York. FDIC has advised us that before any disbursements can be made, they must first review the plan, which may take up to 90 days. They will then turn it over to IRS for review. All of this may take up to one year. Until this process is complete, employees will not have access to their funds.

During this time, many employees have lost their jobs. Some have been offered temporary employment (60 to 90 days) with the acquiring bank. As a result, it is imperative that we have access to our money as soon as possible. Without jobs, many of us will need those funds just to meet every day living expenses. Considering the current economic conditions in Alaska, can the state afford the additional burden of more homes being foreclosed upon?

Another issue I would like to address is accrued vacation pay. According to FDIC, final pay to employees of a failed bank is regulated under Alaska State Statute 06.05.470 (t) (2). Subsequently, employees were paid for any vacation time which was accrued in the three months prior to the failure. Under those provisions, I was paid \$395.70. I am still owed \$1863.59 for accrued vacation pay. Although at some time we will be given the

opportunity to file a claim on these unpaid earnings, consensus is our chances of receiving further compensation are not good.

The former employees of First Interstate Bank are facing extremely unsettling times. While depositors have suffered no losses in this takeover, employees, on the other hand, do stand to sustain substantial losses, both through non-payment of earned vacation pay and unavailability of 401K funds. Any pressure that you can exert as an elected official upon the FDIC and the IRS to speed up the release of the 401K fund, and upon the State of Alaska Banking Commission to reimburse the employees for lost vacation pay would be greatly appreciated.

I anxiously await your response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carole Panduren". The signature is written in dark ink and is positioned above the typed name.

Carole Panduren

PO Box 105038

Anchorage AK 99510



Official Business

COMMITTEE:
HOUSE LABOR & COMMERCE

DATE: March 31, 1988

SIGN-IN

Subject of meeting:

HB 15 "An Act providing certain tax benefits in business enterprise zones; and providing for an effective date." WORK SESSION
 HCR 39 "Encouraging the restriction of foreign workers on oil and gas production and exploration structures on the outer continental shelf."
 HB 517 "An Act relating to civil liability of certain volunteers."
 HB 394 "An Act relating to electric and telephone cooperatives; and providing for an effective date." WORK SESSION

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT TO TESTIFY?

SUBJECT: BILL #

Sally Sandler Labor Economist IV	Dept of Labor		H W 4500	Yes	HB 15
Judy Hughes	FRAN Ulmer		H W 4947	Yes	HB 517
Jim Dumont	AK. Rec + Park Assn		H W 586-5226	Yes	HB 517
Bob Barrett	AARP State Legisl Committee		H W 586-2066	Yes	HB 517
James Sandwick	DOZ		H W	✓	HB 542
			H W		
			H W		
			H W		
			H W		
			H W		



Official Business

COMMITTEE:

HOUSE LABOR & COMMERCE

DATE: March 29, 1988

SIGN-IN

Subject of meeting:

HB 457 "An Act relating to the Alaska stabilization assistance program." WORK SESSION
 HB 458 "An Act making a special appropriation to the Alaska stabilization assistance fund." WORK SESSION
 HB 542 "An Act relating to employer obligations when an employer makes a substantial change in a business activity or when a governmental entity contracts certain activities to a private entity."
 HB 368 "An Act relating to occupational therapists."

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT TO TESTIFY?

SUBJECT: BILL #

NAME & TITLE	REPRESENTING	ADDRESS & ZIP	PHONE	DO YOU WANT TO TESTIFY?	SUBJECT: BILL #
Dave Rose	SELF	4660 Thune Rd	H 586-4892 W 465-2047	Yes	457
Ashley Reed	Hollywood Group	1007 W 3rd Ave #200 Anchorage AK 99501	H 4633564 W 2795359		
James Sawick	Dept. of Labor		H W 465-2700	Yes	452
Pat Spry	AFL-CIO	1211 FIRST ST ANCHORAGE, AK	H W 586-1670	No	452
Tor			H W		
Cherie Shelley	A.P.E.A.	3410 1st St Anchorage 19801	H W 2331		
			H W		
			H W		
			H W		
			H W		

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/17/88

FURTHER REFERRALS:

C&RA
Judiciary
Finance

DATE: 3/31/88

The Labor & Commerce Committee has considered HB 542

~~HOUSE BILL NO.~~

"An Act relating to employer obligations when an employer makes a substantial change in a business activity or when a governmental entity contracts certain activities to a private entity."

RECOMMENDS:

- replace with CS HB542 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

David A. Donley
Alto F. Korman
C. C. Hughes
Carl M. ...
Ally Davidson
Ally Ellis

David A. Donley
 Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: _____	Agency Affected: <u>Labor</u>
Title: <u>"An Act relating to employer obligations...."</u>	BRU: <u>Labor Standards & Safety</u>
Sponsor: <u>House Labor & Commerce</u>	Components: <u>Wage & Hour</u>
Requestor: <u>House Labor & Commerce</u>	

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 3/31/88

Approved by Commissioner: Jim Sampson Date: 3/31/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

TABLE A.
OF THE EMPLOYERS CLASSIFIED IN PRIVATE INDUSTRY, WHO ARE SUBJECT TO ALASKA'S UNEMPLOYMENT INSURANCE LAWS, 54% REPORTED 0 TO 3 EMPLOYEES DURING THE PAY PERIOD THAT INCLUDED THE 12TH OF SEPTEMBER, 1987.

TABLE A

STATEWIDE
EMPLOYERS BY SIZE CLASS
SEPTEMBER 1987

SIZE CLASS	0-3	4-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+	TOTAL
NUMBER OF EMPLOYERS	7,084	3,259	1,385	806	252	164	46	14	7	13,017
PERCENTAGE	54.42	25.04	10.64	6.19	1.94	1.26	.35	.11	.05	100.00

10% of Employers

TABLE B:
APPROXIMATELY 13% OF ALL EMPLOYEES REPORTED BY EMPLOYERS CLASSIFIED IN PRIVATE INDUSTRY, WHO ARE SUBJECT TO ALASKA'S UNEMPLOYMENT INSURANCE LAWS, WERE ON THE PAYROLL OF EMPLOYERS WHO COUNTED 4 TO 9 PERSONS DURING THE PAYROLL PERIOD THAT INCLUDED THE 12TH OF SEPTEMBER, 1987.

TABLE B

STATEWIDE
EMPLOYEES BY SIZE CLASS
SEPTEMBER 1987

SIZE CLASS	0-3	4-9	10-19	20-49	50-99	100-249	250-499	500-999	1000+	TOTAL
EMPLOYEE COUNTS	8,536	19,186	18,671	23,743	17,745	25,059	16,369	9,519	11,496	150,324
PERCENTAGE	5.68	12.76	12.42	15.80	11.80	16.67	10.89	6.33	7.65	100.00

70% of employees

5-2116A

Cramer
3/29/88

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 HOUSE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to notification of employees when an
7 employer makes a substantial change in a business
8 activity or when a governmental entity contracts
9 certain activities to a private entity."

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

11 * Section 1. LEGISLATIVE FINDINGS. (a) The legislature finds that
12 employment is vitally important to an individual's economic well-being and
13 self-respect. Employees invest their skills and efforts in their employ-
14 er's activity and have a vital stake in the employer's continued operation
15 and their continued employment. When their employment is terminated due to
16 the termination, transfer of ownership, or relocation of the business or
17 governmental activity, the employees suffer heavy economic and personal
18 losses.

19 (b) The legislature further finds that when an employer closes or
20 relocates, particularly if the employer employs a large number of employees
21 in a locality or within an industry, it is difficult, and sometimes impos-
22 sible, for the former employees to find comparable employment with another
23 employer. When an employer closes or relocates or when employees are
24 terminated because of a transfer of ownership, long-time employees lose the
25 seniority, benefits, and unaccrued pension credits they have earned during
26 their many years of service. Employment offering comparable wages and
27 benefits is unavailable to many, and some older employees will be unable to
28 find alternative employment.

29 (c) The legislature determines that employers should be required to

1 notify their employees of anticipated substantial changes in business
2 activity so that the employees can prepare for the future.

3 * Sec. 2. AS 23.10 is amended by adding new sections to read:

4 ARTICLE 7. EMPLOYMENT CLOSURE, RELOCATION, OR TRANSFER.

5 Sec. 23.10.450. RIGHT TO NOTICE. (a) Except as provided in (b)
6 of this section, an employer who expects to make a substantial change
7 in business activity shall give each employee written notice of the
8 anticipated change at least 60 days before the date of change. An
9 employer who fails to give timely notice is liable to an employee for
10 severance pay in the amount of one month's pay.

11 (b) An employer is not liable for severance pay under this
12 section to an employee if

13 (1) the employee is covered by an express contract provid-
14 ing for severance pay in an amount equal to or greater than that
15 required by AS 23.10.450 - 23.10.470; or

16 (2) the predecessor or successor employer offers the em-
17 ployee employment that provides wages and benefits that are substan-
18 tially similar to those that the employee received before the substan-
19 tial change in the business activity.

20 Sec. 23.10.460. GOVERNMENTAL LIABILITY. (a) A governmental
21 entity that ceases to employ employees to perform an activity and
22 contracts with one or more private entities to have all or a substan-
23 tial portion of the activity performed by the private entities shall
24 notify employees whose employment is affected by the cessation as
25 required of employers under AS 23.10.450. The governmental entity is
26 liable to employees for failure to give timely notice as provided in
27 that section.

28 (b) In this section, "governmental entity" means the state, a
29 municipality, a political subdivision of the state, the University of

1 Alaska, or the Alaska Railroad, and includes an administrative unit of
2 the state, municipality, political subdivision, university, or rail-
3 road.

4 Sec. 23.10.470. DEFINITIONS. In AS 23.10.450 - 23.10.470

5 (1) "employee" means an individual employed by an employer
6 or a governmental entity;

7 (2) "employer" includes an individual, partnership, asso-
8 ciation, corporation, business trust, or other nongovernmental entity
9 that employs eight or more persons;

10 (3) "one month's pay" means the average monthly compen-
11 sation paid to an employee by an employer based on the amount of
12 compensation received by the employee during the preceding 12 months;

13 (4) "predecessor employer" means an employer who has trans-
14 ferred the ownership of a business or a part of a business to another;

15 (5) "relocation" of a business or part of a business means
16 removal of all or substantially all operations of the business, a
17 separate facility or branch, or a distinct division or department of a
18 business to a location at least 60 miles away from the original loca-
19 tion;

20 (6) "substantial change in a business activity" means the
21 relocation, termination, or transfer of ownership in a business or a
22 part of a business;

23 (7) "successor employer" means an employer to whom the
24 ownership of a business or a part of a business has been transferred;

25 (8) "termination" of a business or part of a business means
26 that all or substantially all operations of the business, a separate
27 facility or branch, or a distinct division or department of a business
28 cease and that the business or part of the business is permanently
29 closed;

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(9) "transfer of ownership" of a business or part of a business includes a transfer of ownership in a business, a separate facility or branch, or a distinct division or department of a business, including sale of stock, a sale of assets, a foreclosure or other form of repossession by creditors, a gift, a devise, or any other means of transfer of ownership.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 542
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
Title: "An Act relating to employer obligations...." BRU: Labor Standards & Safety
Sponsor: House Labor & Commerce Components: Wage & Hour
Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
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REVENUE						
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Tom Stuart, Director Phone: 264-2452
Division: Labor Standards & Safety Date: 3/25/88

Approved by Commissioner: Jim Sampson Date: 3/25/88
Agency: Department of Labor

Distribution (by preparer) :
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

HB

549

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-455-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House L. 3 C:

April 12, 1988

April 14, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/28/88

FURTHER REFERRALS:

Judiciary

DATE: 4/14/88

The Labor & Commerce Committee has considered HB 549

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

RECOMMENDS:

- replace with CS HB 549 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

W. Furnace

with amendments

E. C. Boudin

SIGNING OTHER RECOMMENDATIONS:

Donch Douley (No Rec)

St. Ellis (no rec)

Vital Ferguson no rec

Donch Douley

Chairman's signature

Original sponsor: Rules by Request/House Members
of the Joint Committee on
Economic Recovery

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 549 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 Sec. 34.20.132. NOTICE OF OTHER REMEDIES. (a) When a lender
12 uses a note as evidence of an obligation secured by a deed of trust,
13 the note must affirmatively advise the trustor or borrower and any
14 other party bound by the note if the beneficiary or lender wants the
15 option to bring suit directly on the note to collect an amount owing
16 under the note without first foreclosing the deed of trust. This
17 option must be stated in writing within the note or as a separate
18 document. If a note executed after the effective date of this Act
19 fails to contain the notice specified in this section, the debt
20 secured by the deed of trust may be foreclosed under AS 09.45.170 -
21 09.45.220 or AS 34.20.070 - 34.20.135.

22 (b) If the beneficiary or lender wishes to collect an amount
23 owing under the note without first foreclosing the deed of trust, the
24 following language is sufficient in the note:

25 The trustor or borrower is personally obligated and fully
26 liable for the amount due under the note. The security
27 available to the beneficiary or lender is not limited to
28 the property identified in the deed of trust and the bene-
29 ficiary or lender has the right to sue on the note and

1 obtain a personal judgment against the trustor or borrower
2 for satisfaction of the amount due under the note either
3 before or after a judicial foreclosure of the deed of
4 trust under AS 09.45.170 - 09.45.220.

5 (c) In this section, "note" includes a rider to the note.

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

Original sponsor: Rules by Request/House Members
of the Joint Committee on
Economic Recovery

1 IN THE HOUSE

2 CS FOR HOUSE BILL NO. 549 ()

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

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

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

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

11 Sec. 34.20.132. AVAILABILITY OF OTHER REMEDIES. When a lender
12 uses a note as evidence of an obligation secured by a deed of trust,
13 the note must affirmatively advise the trustor and any other party
14 bound by the note, in writing, of the security, recourse, and other
15 remedies, if any, that the beneficiary intends to rely on. If the
16 beneficiary wants the option of bringing suit to collect an amount
17 owing on the obligation without foreclosing the deed of trust, this
18 option must be stated in writing within the note. A beneficiary may
19 not use a remedy not specifically and clearly stated on the note
20 executed after the effective date of this Act. If a note executed
21 after the effective date of this Act fails to contain a description of
22 other security, recourse, or remedies beyond the specific property
23 stated as security for the debt, the debt secured by the deed of trust
24 may be foreclosed only under AS 34.20.070 - 34.20.135, a deficiency
25 judgment may not be entered, and no other action may be taken nor
26 judgment entered against the trustor, surety, or guarantor on the
27 obligation secured by the note. In this section, "note" includes a
28 rider to the note.

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

Insert at line 29 of the proposed HB 549 CS dated 4/12/88:

(b) If the beneficiary wishes to be permitted to judicially foreclose on a Deed of Trust under AS 34.20.070 - 34.20.135 or to collect an amount owing on the obligation without foreclosing the deed of trust, the following language shall be deemed sufficient in the note or as a rider attached to the note:

"The trustor (or guarantor, surety, or endorser of the note) is personally obligated and fully liable for the amount due under the note. This means that the security is not limited to the deed of trust and the beneficiary has the right to foreclose on the note and obtain a judgment against the borrower personally for satisfaction of the amount due before or after judicially foreclosing the deed of trust under AS 34.20.070 - 34.20.135."

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

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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

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

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

April 11, 1988

The Honorable Dave Donley
House of Representatives
State of Alaska
House Labor & Commerce Committee, Chairman
P.O. Box V
Juneau, AK 99811

Re: HB 549

Dear Representative Donley:

You have requested the Department's position on HB 549. The Department of Law has no position on the substantive portion of the bill. The effect of the bill requires lenders to change their forms if the forms do not already include the language required by the Act. The forms used by the Department of Commerce and Economic Development already include language that could be adopted by other agencies as necessary.

We do however, recommend an effective date of at least 90 days, if not longer. This period is necessary to allow lenders' notice of the new law, and time to get new forms printed and distributed.

If I may be of further assistance please let me know.

Sincerely,

GRACE BERG SCHAIBLE
ATTORNEY GENERAL

By:


Joyce James
Assistant Attorney General

JJ:prm

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
 Title: An Act relating to notice BRU: _____
requirements on use of a deed of trust
 Sponsor: Rules Committee Components: Banking
 Requester: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

L. Carroll
 Prepared by: Lawrence P. Carroll, Acting Director
 Division: Banking, Securities & Corporations
 Approved by Commissioner: *J. Anthony Smith*
 Agency: Department of Commerce & Economic Development

Phone: 465-2521
 Date: 4/11/88
 Date: 4/12/88

Distribution (by preparer):

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

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to notice requirements on the use of a deed of trust..."
Sponsor: House Rules
Requestor: House Labor & Commerce

Agency Affected: Department of Law
BRU: Legal Services
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Date: April 11, 1988
 Approved by Commissioner: Richard I. Pegues / FOR / Grace Berg Schaible, Atty. Gen. Date: April 11, 1988
 Agency: Department of Law

Distribution (by preparer):

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 549

This bill amends AS 34.20 by adding a new section that provides that lenders must affirmatively advise borrowers, and any other person bound by a note, of the remedies available to lenders to collect secured loans without foreclosing on the deed of trust. This notification must be in writing within a note secured by a deed of trust. Most of these transactions are between private parties, except for the secured state loan programs administered by the Department of Commerce and Economic Development. In this latter case, the Department of Law will be required to draft new note forms; however, this work will not cause a fiscal impact.



Alaska State Legislature

House

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

TO: Members of the House Labor and Commerce Committee

FROM: Representative Steve Rieger *SR*
Co-Chair, Subcommittee on Housing and Banking
for the House Joint Committee on Economic Recovery

DATE: April 11, 1988

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

* * * * *

The purpose of HB 549 is to inform the borrower that he is in fact liable for the total amount of the debt, regardless of the market value of the property, and that he signed a Note as a promise to pay for the debt. In short, it is simply a disclosure statement to the borrower of the lender's available remedies, should foreclosure actions be deemed necessary.

Both FHLMC (Federal Home Loan Mortgage Corporation) and FNMA (Federal National Mortgage Association) have provided positive endorsement for the concept of the legislation. However, due to federal government requirements, they have requested that the "notice" information be contained outside the actual document of the Note, rather than within the body of the Note. FHLMC has also recommended that we consider requiring the explanation to be spelled out in law in order to avoid future "language" problems that would develop if each lender is allowed to write their own language.

Further, the Alaska Association of Realtors endorses the concept of the legislation with an amendment that the language be included as a "rider" to the Note to avoid redrafting of standard forms now used in the industry. Testimony from various Alaska banking institutions as well as the Alaska Bankers Association has also been positive, and they are all recommending the notice language be included as a rider to the Note.

Hence, we are offering the attached bill draft as a committee substitute for HB 549 for your favorable consideration and passage.

* * * * *

When a person wants to buy a piece of property and does not have sufficient cash for the total payment, he obtains a loan. The borrower agrees to pay the lender for a debt and the lender agrees to give the borrower the funds necessary to secure the property.

A typical loan in Alaska requires the borrower to understand and sign a volume of paperwork upon closing of the loan. A Deed of Trust to secure the property is used, and usually a Note is also signed as evidence of an obligation secured by the Deed of Trust.

If the borrower defaults in paying for the property, the lender has the option of taking certain actions. The actions taken govern the remedies allowed. The lender can foreclose judicially, (through the courts), or nonjudicially, (without court assistance). If the lender decides to foreclose nonjudicially, he may:

- a. Foreclose nonjudicially on the Deed of Trust and obtain payment through sale of the property. Suit on the Note following nonjudicial foreclosure of the Deed of Trust is not allowed.
- b. Sue on the Note through judicial means and obtain payment of the debt through seizure of assets, i.e. bank accounts, other property, wages, vehicles, etc. If any debt remains after the Note remedies have been exhausted, then the lender has the option then foreclose nonjudicially on the Deed of Trust and (most likely) obtain the balance of the debt remaining.

Historically, property values had a tendency to increase over the life of a loan. If nonjudicial foreclosure was warranted, the lender simply foreclosed on the Deed of Trust, thereby extinguishing the debt owing, as the property was worth more than the loan and it was (more than) sufficient to cover the debt.

Recently, property values have dropped substantially, and the loan on the property now exceeds the actual market value of the property when purchased. When foreclosure action is taken, the suit alone on the Deed of Trust will not cover the entire debt amount, as the property is "under water" or has "negative equity". The lender has the option to foreclose judicially or nonjudicially; nonjudicial foreclosures are more typical than the judicial type, and definitely less costly.

Under a nonjudicial foreclosure, the borrower's assumption in the past had been that the lender could only sue on the Deed of Trust. However, the lender does have the option to foreclose on the Note through judicial means prior to foreclosing on the Deed of Trust (nonjudicially) in order to obtain payment of the debt, and two recent Alaska Supreme Court decisions are cases on point. (Moening v. Alaska Mutual Bank (2/26/88), Conrad v. Counsellors Investment Company (2/26/88)).

At the time of closing, the borrower did indeed sign the Deed of Trust as security for the property and also signed the Note promising to pay the amount of the debt. Yet, because there is so much involved with closing a loan, the simple facts and understandings sometimes get lost in the paper shuffle. The problem lies in the fact that borrowers were under the assumption that if they were foreclosed upon, they could just turn in the keys and walk away from the property, (thereby extinguishing the debt), and the lender could not take any personal assets as payment of the debt, unless, of course, the lender pursued judicial foreclosure, (i.e. deficiency judgment and right of redemption period). Many borrowers today seem surprised that the lender does indeed have the option to sue on the Note prior to foreclosing on the Deed of Trust.

JUDICIAL V. NONJUDICIAL FORECLOSURE PROVISIONS:

JUDICIAL FORECLOSURE -

In a judicial foreclosure, the court forecloses on the Deed of Trust, orders the property sold, and may give the lender a deficiency judgement for the difference of what they can sell the property for and what is actually owed on the property. This deficiency judgement is a personal obligation on the part of the borrower. The borrower is also given a "right of redemption" period (one year) to pay what is owed and regain possession to the property, (unless the property is sold to a bonafide purchaser and not subject to the right of redemption).

Judicial foreclosures can take a great deal of effort, are expensive, and time consuming as well.

NONJUDICIAL FORECLOSURE -

Foreclosure conducted outside the court system. No deficiency judgement or right of redemption period allowed. Lender has option to sue on the Note (by judicial means) prior to suing on the Deed of Trust, (AS 09.45.170).

The Alaska Supreme Court concluded in Moening v. Alaska Mutual Bank (2/26/88), a secured creditor may initially ignore the security, and sue on the note, absent an agreement to the contrary. Further, under Conrad v. Counsellors Investment Company (2/26/88), the Supreme Court concluded that the deed of trust does not expressly preclude a suit on the note. Under common law, (AS 34.20.100), a prior suit on the note does not preclude subsequent nonjudicial (or judicial foreclosure) of the security.

Up until recently, it was to the benefit of the lender to sue on the Deed of Trust, as the property was usually worth more than the amount owing; suit on the note was unnecessary, as the lender received the full amount of the debt upon a foreclosure sale of the property. Within the past several years, many property values have dropped significantly, and the amount owing can be more than the actual market value of the property, hence the term "negative equity" or "under water".

The Alaska lending institutions have taken the following three approaches to foreclosure:

1. If the borrower has no significant assets, the lender sues on the Deed of Trust. However, if the borrower is making a good faith effort to remedy his defaulting loan status, then the lender usually works with him to bring the loan current before taking steps to foreclose. The lenders are not interested in managing foreclosed properties.
2. If the borrower has other assets to cover the debt to the lender, but is willing to work with the lender to alleviate the debt, then the lender does not take up a suit on the note, but rather attempts to work out some arrangement for payment with the borrower.
3. If the borrower has other assets to cover the debt to the lender, and is unwilling to cooperate with the lender in working out some sort of payment arrangements, then the lender may take steps to sue on the note prior to foreclosing on the Deed of Trust.

Only in Case #3 does the lender sue on the Note, and there have been very few instances where they have been forced to sue on the Note prior to foreclosing on the Deed of trust. The recent Alaska Supreme Court decisions have not altered the way the banks do business in Alaska, and it is "business as usual". What these two cases have pointed out is that the lender does indeed have the option to sue on the Note prior to foreclosing nonjudicially on the Deed of Trust.

The lender does have the option to a judicial foreclosure, and will in some cases go this route if the lender feels that it is worth going after the holder of the deed of trust personally via a deficiency judgement issued by the courts. (In many cases, it is not worth the time, effort and expenditure to the lender to foreclose via the court system.)

JUDICIAL FORECLOSURE

NONJUDICIAL FORECLOSURE

-Requires Court Action

-No court action required

-Deficiency judgment may be awarded

-No deficiency judgment
-Suit on the Note is optional prior only to nonjudicial foreclosure on Deed of Trust

-Right of Redemption period allowed (one year)

-No Right of Redemption

Mortgage -

A lien on property - does not create title or estate to secure the unpaid balance of the purchase price.

(Mortgages are rarely used in the State of Alaska.)

Foreclosure proceedings can only be conducted judicially, (through the court system) with a mortgage because there is nothing in place in the mortgage document for default remedies.

Deed of Trust

Instrument used by which legal title to real property is placed in one or more trustees to secure the repayment of a sum of money, (or the performance of some other condition). Differs in form from a mortgage as it is essentially a security.

The deed of trust document has prescribed foreclosure provisions, thereby allowing the lender to foreclose outside of court, i.e. nonjudicial foreclosure proceedings. Foreclosure proceedings can be accomplished by judicial or nonjudicial means. Deficiency judgements are prohibited in a nonjudicial foreclosure; however, the lender can sue on the Note prior to a nonjudicially foreclosing on the Deed of Trust. No suit is allowed on the Note if the lender chooses to foreclose nonjudicially on the Deed of Trust first.

Note -

A unilateral instrument containing an express and absolute promise of signer to pay a specified person a definite sum of money at a specified time.

Right of Redemption - that period of time, (one year), as set by statute for the defaulting borrower to "redeem" himself and pay up on the mortgage, thereby regaining "custody" of his property. Generally, there is no right of redemption in a nonjudicial foreclosure.

HB 549 - Offered as a CS to House Labor and Commerce Committee
4/12/88

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

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

Sec. 34.20.132 NOTICE OF OTHER REMEDIES. When a lender uses a note as evidence of an obligation secured by a deed of trust, the note must affirmatively advise the trustor and any other party bound by the note, in writing [within the note], of the security, recourse, and other remedies, if any, available to the beneficiary. If it is intended to permit the beneficiary to bring suit to collect an amount owing on the obligation without foreclosing the deed of trust, this intent must be stated in writing within the note. A beneficiary may not use a remedy not specifically and clearly stated on [a] the note executed after the effective date of this Act. If a note executed after the effective date of this Act fails to contain [the] a description of other security, recourse, or remedies beyond the specific property stated as security for the debt, the debt secured by the deed of trust may be foreclosed only under AS 34.20.070-34.20.135, a deficiency judgment may not be entered, and no other action may be taken nor judgment entered against the trustor, surety, or guarantor on the obligation secured by the note.

(b) If the beneficiary wishes to be permitted to collect an amount owing on the obligation without foreclosing the deed of trust, the note or a rider attached to the note must contain the following language:

"The trustor (or guarantor, surety, or endorser of the note) is personally obligated and fully liable for the amount due under the note. This means that the security is not limited to the deed of trust and the beneficiary has the right to foreclose on the note and obtain a judgment against the borrower personally for satisfaction of the amount due before foreclosing the deed of trust under AS 34.20.070 - 34.20.135."

(c) In this section, "note" includes a rider attached to the note.

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

1 IN THE HOUSE

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

2

HOUSE BILL NO. 549

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

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

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

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

1776 G Street NW
PO Box 37248
Washington, DC 20013
202/789.4700



Owned by America's
Savings Institutions

April 9, 1988

Representative Steve Rieger
Co-Chair, Subcommittee on Housing and Banking
House Joint Economic Recovery Committee
Pouch V
State Capitol
Juneau, Alaska 99811
C/O Ann Ringstad

Dear Representative Rieger:

At Ann Ringstad's request, I am providing you with comments on H.B. 549, a bill requiring a notice on the mortgage note of the lender's remedies under Alaskan state law when a borrower defaults on a mortgage.

By way of background, the Federal Home Loan Mortgage Corporation, better known as Freddie Mac, was created by Congress in 1970 to increase the amount of funds available for mortgage lending. Freddie Mac accomplishes its mandate by purchasing residential mortgages from lenders, thereby replenishing their supply of funds to be lent to additional home buyers. Freddie Mac guarantees the payment of the mortgages and sells securities backed by the mortgages to institutional and private investors. In 1987, Freddie Mac purchased nearly \$102 million in mortgages from Alaska lenders.

Freddie Mac certainly agrees with the concept of an informed consumer. This is not only good public policy, it is good business practice. We commend the Legislature for its concern that consumers be made aware of the lender's ability to utilize several remedies, including deficiency judgements, in default situations.

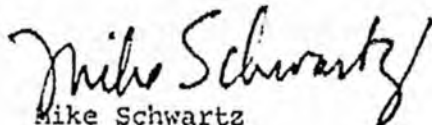
We are concerned about your method for informing the consumer. Adding more information to the note or deed may defeat your intent by making the document too complicated, wordy and intimidating. Also, making Alaska mortgage documents less uniform from notes in other states runs counter to the national trend toward uniform documents. As the mortgage finance industry becomes more reliant on the secondary mortgage market and its investors, uniform documents take on increasing importance.

Representative Steve Rieger
April 9, 1988
Page two

We recommend that you consider requiring an explanation of lenders' remedies on a separate piece of paper which both borrower and lender would sign at closing time. The language of this explanation should be spelled out in the law in order to avoid a different explanation from each lender.

I hope this information is helpful to you and that you will call whenever you have questions on this or other issues of mutual interest.

Sincerely,



Mike Schwartz
Legislative Director

MS:mcf



ALASKA ASSOCIATION OF REALTORS, INC.[®]
1836 West Northern Lights Blvd. • Anchorage, Alaska 99517
Telephone 907-278-0856

Representative Steve Rieger
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

April 7, 1988

Dear Representative Rieger,

The Alaska Association of REALTORS[®], after careful consideration, is supporting the passage of HB 549. The full disclosure to all parties involved in real estate transactions can only benefit the public. The Association would suggest however, that the disclosure be accomplished through a "rider" to other documents. This would serve the purpose without a complete redrafting of the standard forms.

We enthusiastically support passage of HB 549.

Sincerely,

Dea Turner
Executive Vice President



NOTE

See # 8 + 6(c)

....., 19....., Alaska
(City)

[Property Address, Add Borrower's Post Office Address, if Different]

1. BORROWER'S PROMISE TO PAY

In return for a loan that I have received, I promise to pay U.S. \$..... (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is..... I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of.....%

The interest rate required by this Section 2 is the rate I will pay both before and after any default described in Section 6(B) of this Note.

3. PAYMENTS

(A) Time and Place of Payments

I will pay principal and interest by making payments every month.

I will make my monthly payments on the..... day of each month beginning on..... 19..... I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on..... I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "maturity date."

I will make my monthly payments at..... or at a different place if required by the Note Holder

(B) Amount of Monthly Payments

My monthly payment will be in the amount of U.S. \$.....

4. BORROWER'S RIGHT TO PREPAY

I have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." When I make a prepayment, I will tell the Note Holder in writing that I am doing so.

I may make a full prepayment or partial prepayments without paying any prepayment charge. The Note Holder will use all of my prepayments to reduce the amount of principal that I owe under this Note. If I make a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. LOAN CHARGES

If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted limits, then: (i) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal I owe under this Note or by making a direct payment to me. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. BORROWER'S FAILURE TO PAY AS REQUIRED

(A) Late Charge for Overdue Payments

If the Note Holder has not received the full amount of any monthly payments by the end of..... calendar days after the date it is due, I will pay a late charge to the Note Holder. The amount of the charge will be.....% of my overdue payment of principal and interest. I will pay this late charge promptly but only once on each late payment.

(B) Default

If I do not pay the full amount of each monthly payment on the date it is due, I will be in default.

(C) Notice of Default

If I am in default, the Note Holder may send me a written notice telling me that if I do not pay the overdue amount by a certain date, the Note Holder may require me to pay immediately the full amount of principal which has not been paid and all the interest that I owe on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to me.

(D) No Waiver By Note Holder

Even if, at a time when I am in default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in default at a later time.

(E) Payment of Note Holder's Costs and Expenses

If the Note Holder has required me to pay immediately in full as described above, the Note Holder will have the right to be paid back by me for all of its costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees.

7. GIVING OF NOTICES

Unless applicable law requires a different method, any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail to me at the Property Address above or at a different address if I give the Note Holder a notice of my different address.

Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address stated in Section 3(A) above or at a different address if I am given a notice of that different address.

8. OBLIGATIONS OF PERSONS UNDER THIS NOTE

If more than one person signs this Note, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also obligated to do these things. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Note, is also obligated to keep all of the promises made in this Note. The Note Holder may enforce its rights under this Note against each person individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note.

9. WAIVERS

I and any other person who has obligations under this Note waive the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

10. UNIFORM SECURED NOTE

This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, Deed of Trust or Security Deed (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if I do not keep the promises which I make in this Note. That Security Instrument describes how and under what conditions I may be required to make immediate payment in full of all amounts I owe under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED

..... (Seal)
Lender

..... (Seal)
Borrower

..... (Seal)
Borrower

[Sign Original Only]

APL 09 '89 09:02 L10 - FAIRBANKS

P. 2

\$ _____, Alaska, _____, 19 _____ No. _____

For value received, we jointly and severally promise to pay to the order of

DENALI STATE BANK at its office in _____, Alaska,

_____ DOLLARS

with interest from _____ at the rate of _____ per cent per annum until this note is fully paid.

Principal and interest payable \$ _____ per month _____ on the _____ day of each month, beginning _____, and continuing until this note is paid in full.

The amount of interest due on this note is to be paid at the same time the principal installments are paid. If any such installments of principal or interest is not paid when due, the whole sum of principal and interest shall at the option of the holder become immediately due and payable. Principal and interest are payable only in Legal Currency of the United States of America. For value received each and every party signing or endorsing this note hereby waives presentment, demand, protest, and notice of non-payment, any release or discharge arising from any extension of time, discharge of a prior party, or from any cause other than actual payment in full hereof, binds himself hereon as a principal, not as surety, and promises, if this note is not paid at maturity and is placed in the hands of an attorney for collection, or suit is brought hereon, to pay all costs of collection including reasonable attorney's fees.

Security _____

Mailing Address _____

Living Address _____

FHA FORM NO. 9197A
Revised 1/71

This form is used in connection with deeds of trust insured under the one-to-four-family provisions of the National Housing Act.

DEED OF TRUST NOTE

FHA CASE NO.

§

, Alaska.
, 19

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of

the principal sum of
Dollars

(\$), with interest from date at the rate of
per centum (%) per annum on the balance remaining from time to time unpaid. The
principal and interest shall be payable at the office of

in
or at such other place as the holder hereof may designate, in writing, in monthly installments of
Dollars

(\$), commencing on the first day of , 19 , and on the
first day of each month thereafter, until the principal and interest are fully paid except that the final
payment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable on
the first day of

If default be made in the payment of any installment under this note, and if such default is not made
good prior to the due date of the next such installment, the entire principal sum and accrued interest
shall at once become due and payable at the option of the holder of this note. Failure to exercise this
option shall not constitute a waiver of the right to exercise the same in the event of any subsequent de-
fault. If any suit or action is instituted to collect this note or any part thereof the undersigned promi-
se(s) and agree(s) to pay, in addition to the costs and disbursements provided by statute, a reasonable
sum as attorney's fees in such suit or action.

The undersigned, whether principal, surety, guarantor, endorser, or other party hereto, agrees to be
jointly and severally bound, severally hereby waive any homestead or exemption right against said debt,
waive demand, protest and notice of demand, protest and nonpayment, and expressly agree that this note
or any payment thereunder may be extended from time to time and consent to the acceptance of further
security, including other types of security, all without in any way affecting the liability of such parties.

This note is secured by a Deed of Trust, of even date herewith, to
as Trustee, on real estate situated in the Recording Precinct,
State of Alaska, and this note is to be construed according to the laws of the State of Alaska.

NOTICE: THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE VETERANS ADMINISTRATION OR ITS AUTHORIZED AGENT.

\$ _____, Alaska
_____ 19 _____

FOR VALUE RECEIVED, the undersigned jointly and severally, promise to pay to the order of

the principal sum of

Dollars

(\$ _____), with interest from date at the rate of _____ per centum (_____ %) per annum on the unpaid balance until paid. The said principal and interest shall be payable at

or at such other place as the holder may designate in writing delivered or mailed to the debtor, in monthly installments of

Dollars

(\$ _____), commencing on the _____ day of _____, 19 _____, and continuing on the _____ day of each month thereafter, until this note is fully paid, except that, if not sooner paid, the final payment of principal and interest shall be due and payable on the _____ day of _____.

Privilege is reserved to prepay at any time, without premium or fee, the entire indebtedness or any part thereof not less than the amount of one installment, or one hundred dollars (\$100.00), whichever is less. Prepayment in full shall be credited on the date received. Partial prepayment, other than on an installment due date, need not be credited until the next following installment due date or thirty days after such prepayment, whichever is earlier.

If any deficiency in the payment of any installment under this note is not made good prior to the due date of the next such installment, or if there be failure to comply with any of the agreements contained in the Deed of Trust securing the Note, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. In the event of default, the undersigned promise(s) and agree(s) to pay necessary expenses as may be incurred in collection, including reasonable attorney's fee.

This note is secured by a Deed of Trust of even date executed by the undersigned on certain property described therein and represents money actually used for the acquisition of said property or the improvements thereon.

The undersigned agree to be jointly and severally bound, severally hereby waive demand, protest and notice of demand, protest and nonpayment, and expressly agree that this note or any payment thereunder may be extended from time to time and consent to the acceptance of further security, including other types of security, all without in any way affecting the liability of such parties.

I HEREBY CERTIFY that this is the note described in and secured by a Deed of Trust of even date herewith and in the same principal amount as herein stated and secured by real estate in the _____ Recording District, State of Alaska. Dated this _____ day of _____, 19 _____

My commission expires

Notary Public in and for the State of Alaska

HB

550

STATE OF ALASKA
THE LEGISLATURE

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

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House L?C:

April 19, 1988



Official Business

COMMITTEE:

HOUSE LABOR & COMMERCE

DATE: April 19, 1988

SIGN-IN

Subject of meeting:

WORK SESSION - Insurance Related Bills including HB 502, HB 513, HB 514, HB 515, HB 313, HB 227.

- HB 550 "An Act authorizing the Dept. of Community and Regional Affairs to modify the terms of its mortgage loans; and providing for an effective date."
- HB 552 "An Act relating to civil liability for emergency aid."
- HB 402 "An Act establishing a program in the AIDEA to guarantee business loans, and limiting the Authority's ability to issue bonds; and providing for an effective date."

PLEASE PRINT
NAME & TITLE

REPRESENTING

ADDRESS & ZIP

PHONE

DO YOU WANT
TO TESTIFY?

SUBJECT:
BILL #

NAME & TITLE	REPRESENTING	ADDRESS & ZIP	PHONE	DO YOU WANT TO TESTIFY?	SUBJECT: BILL #
DON KUH	DIV. INSURANCE	P.O. Box D JUNO	H W 2577	AS NEEDED	INSURANCE RELATED BILLS
Bill Snieder	AGC		H W	AS NEEDED	HB 227
JP Teugent	Alliance of Amer. Ins.		H W		HB 573 HB 574
JOHN WILLIAMS	DCED		H W		
REP. FRANK			H W		
GENT DAWSON	326 4th ST #203 Juneau, AK 99801	ALASKA TRIAL LAWYERS ASSOC	H W 586 2667	AS NEEDED	HB 552
			H W		
			H W		
			H W		
			H W		

WORK SESSION TESTIMONY

HOUSE COMMITTEE REPORT

(7)

Date referred: 4/11/88

FURTHER REFERRALS: Finance

DATE: 4/19/88

The Labor & Commerce Committee has considered HB 550

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

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 4/11/88
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Cliff Davidson

P. A. Boucher

John Ellis no rec

~~*Hal Korman no rec*~~

David Wiley no rec

David Wiley

 Chairman's signature

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

STEVE COWPER, GOVERNOR

- P.O. BOX B
JUNEAU, ALASKA 99811-2100
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 400
ANCHORAGE, ALASKA 99508-4302
PHONE: (907) 563-1073

April 4, 1988

POSITION PAPER

RE: House Bill 550

SPONSOR: Rules Committee by request of the House Members of the Joint Committee on Economic Recovery.

Program Effects:

This bill would allow the department, under the Housing Assistance Loan Program, to modify loan terms, such as the interest rate and maturity date, when a borrower is experiencing financial distress. This authority already exists in other State assisted housing loan programs so this legislation would make this program consistent with these other State housing loan programs.

Comments:

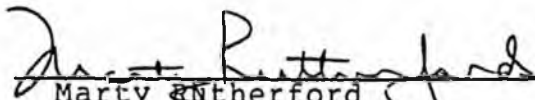
This bill would correct an inconsistency between the provisions of the Housing Assistance Loan Program and other State housing loan programs, such as those offered by the Alaska Housing Finance Corporation. This would give the Housing Assistance Loan Program more options when assisting a distressed borrower to maintain his or her home and credit rating. It would help reduce the maintenance, legal, and resale costs that the Housing Assistance Loan Program experiences every time it cannot save a loan and has to accept the security, such as the real property, rather than repayment of the loan amount.

The Housing Assistance Loan Fund has currently about 1400 outstanding loans. Of these, 45 are in foreclosure, and another 100 are delinquent in payments. Of these delinquencies, the department estimates between one third and one half would be able to take advantage of the loan modification provisions proposed by this legislation.

HB 550
April 4, 1988
Page Two

The Housing Assistance Loan program has considered the financial impact on the Housing Assistance Revolving Loan Fund (HARLF) due to the resultant reduction in the average interest rate the portfolio earns brought about by lowering the interest rate charged to the borrowers. This loss in income, when averaged over the total portfolio, will not impact the loan fund. In addition the department feels that any loss in income due to the reduction in interest income may be offset by reducing the number of non-performing loans by turning them into performing loans. When a borrower goes into default and does not make the required loan payments, the HARLF receives no income from that loan. If the department can immediately work with that borrower and renegotiate loan terms which are acceptable to the State and the borrower, the State will suffer a smaller reduction in income than if it becomes necessary to go to foreclosure and liquidate the security.

The department strongly supports this legislation. It is in the best interests of both the state and the borrowers under this program to implement this statutory change.


Marty Rutherford
Acting Deputy Commissioner

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 550
PUBLISH DATE: HOUSE 4/11/88

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act..DCRA..modify terms of..
mortgage loans..effective date."
Sponsor: Rules Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: Housing Assistance
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: 4/4/88

Approved by Commissioner: [Signature] Date: 4/04/88
Agency: Community & Regional Affairs

Distribution (by preparer):

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

STATE OF ALASKA
1988 LEGISLATIVE SESSION

(1.1) HB 550

BILL VERSION: HB 550
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act..DCRA..modify terms of..
mortgage loans..effective date."
Sponsor: Rules Committee
Requestor: _____

Agency Affected: Community & Regional Affairs
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EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance
Phone: 465-4750
Date: 4/4/88

Approved by Commissioner: [Signature]
Agency: Community & Regional Affairs
Date: 4/04/88

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

April 4, 1988

TO: Rep. Henry Springer, Chariman HCRA
FROM: David C. Harrison, P. A., HCRA *Deft*
SUBJECT: HB 550 "An Act authorizing the Department of
Community and Regional Affairs to modify the terms
of its mortgage loans; and providing for an
effective date." (H Rules Committee by request)

Section 1. Findings by the legislature indicate a need to provide some relief to the distressed real estate market. It is deemed in the interest of the property owners as well as the state to provide reduced interest rates.

Sec. 2 AS 44.47 as amended relates to modification of the interest on loans under AS 44.47.360 - 44.47.560 - please see attached statutes for your references.

Intent of this bill is that DCRA may by loan modification, reschedule principal payments or reduce interest rates or both, if the department finds it creates conditions that the loan would pay to maturity and induce the borrower to remain in active management and ownership of the property and the loan modification would be in the best financial interest of the department and the state; and considered prudent by private lending standards taking into account the financial circumstances of the borrower and other costly alternatives such as foreclosure.

If this bill passes, it would provide conditions for rescheduling of the borrower's repayment of principal under conditions herein which is not intended to affect the obligation of the borrower to repay the principal amount on the mortgage.

Provides that the department (DCRA) may reduce the interest payable on a mortgage if the modification contains an interest rate opener clause whereby if the interest rate is reduced the borrower and the department shall renegotiate the rate of interest on the mortgage within five years of the date of an interest rate reduction approved by the department.. Also, to specify the date the parties are to renegotiate the rate of interest per conditions contained herein and to incorporate a call feature reserving DCRA the

right to demand repayment of the entire principal amount due if the borrower and DCRA are unable to conclude renegotiation of the rate of interest.

Conditions are placed on DCRA under the date call feature of this bill.

The interest rate reduction approved by DCRA under this section cancels the borrower's obligation to pay the amount due that is attributable to the difference between the original interest rate and the interest rate reduction for the period of the rate reduction. Benefit is accrued to the borrower because of reduced interest rate as negotiated.

Renegotiated interest rate may not exceed the original interest rate charged on the mortgage.

Regulations prescribing terms, conditions and procedures applicable to loan modification must be made by DCRA.

Effective date of this bill is July 1, 1988.

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU, ALASKA 99811
907 465-3800

LEGISLATIVE AFFAIRS AGENCY

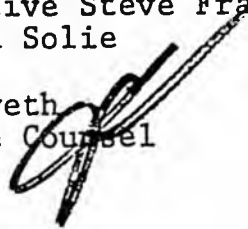
MEMORANDUM

February 29, 1988

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

TO: Representative Steve Frank
ATTN: Rick Solie

FROM: Jack Chenoweth
Legislative Counsel



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

The sources of the principal residential mortgage loan programs are:

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

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

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

-- the Alaska Permanent Fund Corporation;

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

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

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

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

Alaska Housing Finance Corporation mortgage loans:

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

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

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

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

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

Representative Steve Frank
Page 3
February 29, 1988

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

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

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

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

Department of Community and Regional Affairs mortgage loans:

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

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

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

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

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

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

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

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

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

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

Investments of the Alaska Permanent Fund Corporation:

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

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

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

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

Representative Steve Frank
Page 6
February 29, 1988

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

Retirement Funds investments:

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

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

JBC:bb
wkb3/047

FOOTNOTES

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

- home ownership assistance program (a program to provide mortgage subsidies to persons of low and moderate income);
- mobile home loan purchase program (a program to provide low-cost financing for mobile homes);
- pledged account mortgage program (a program to assist persons with sufficient assets but whose income does not meet the minimum monthly income requirements generally applicable to the corporation's loan programs);
- second mortgage loan program (a program to provide low-interest loans for home improvements or rehabilitation in order to make the units more habitable, and to finance second mortgages in order to allow home purchases);
- taxable mortgage program conventional loan (the principal AHFC homeowner assistance program, applicable to owner-occupied units);
- tri-plex and four-plex mortgage loan program (a program to allow the purchase of owner-occupied tri- and four-plex units);
- veterans' mortgage program (a program to provide additional assistance to qualifying veterans through a reduced interest rate);

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

- rural owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a housing unit, limited to single family units and duplexes, for use as the borrower's principal residence);
- rural non-owner-occupied housing (a program to provide financing to qualified borrowers for the construction, purchase, or rehabilitation of a multiple unit housing project, generally two to eight units, though larger under extraordinary circumstances);

Representative Steve Frank

Page 8

February 29, 1988

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

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

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

JBC:bb
wkb3/047

HB

552

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

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

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House LRC:

April 17, 1988

HOUSE COMMITTEE REPORT

(7)

Date referred: 3/29/88

FURTHER REFERRALS: Judiciar

DATE: 4/19/88

The Labor & Commerce Committee has considered HB 552

"An Act relating to civil liability for emergency aid."

RECOMMENDS:

- replace with CS HB 552 (L+C) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Commit

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal n. published _____
- zero fiscal note same as previous zero fis. note published _____
- zero with analysis

SIGNING TO PASS:

Don Duley
Edwards
Leah Bombardieri
Cliff Davidson

SIGNING OTHER RECOMMENDATIONS:

Neil Kozlowski no rec

Don Duley
 Chairman's signature

5-2079X
Lauterbach
4/19/88

Original sponsor: Health, Education and
Social Services Committee

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 552 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil liability for emergency aid
7 administered by community health aides and hospital
8 or clinic employees or staff members."

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

10 * Section 1. AS 09.65.090(a) is amended to read:

11 (a) A person at a hospital or any other location who renders
12 emergency care or emergency counseling to an injured, ill, or emotion-
13 ally distraught person who reasonably appears to the person rendering
14 the aid to be in immediate need of emergency aid in order to avoid
15 serious harm or death is not liable for civil damages as a result of
16 an act or omission in rendering emergency aid. The immunity provided
17 under this subsection does not apply to an employee of a hospital or
18 clinic or a member of a hospital's or clinic's medical, dental, or
19 nursing staff who

20 (1) has a preexisting duty to provide the emergency care or
21 assistance as a part of a hospital's or clinic's operations; and

22 (2) provides the emergency care or assistance while per-
23 forming duties as an employee of the hospital or clinic or as a staff
24 member of the hospital or clinic.

25 * Sec. 2. AS 09.65.090 is amended by adding a new subsection to read:

26 (c) A community health aide under AS 18.28 who renders emergency
27 care or emergency counseling to an injured, ill, or emotionally dis-
28 traught person who reasonably appears to the community health aide to
29 be in immediate need of emergency aid in order to avoid serious harm

1 or death is not liable for civil damages as a result of an act or
2 omission in rendering emergency aid regardless of whether the communi-
3 ty health aide is under a preexisting duty to render assistance. The
4 immunity provided to a community health aide under this subsection
5 does not apply to civil damages that result from providing or attempt-
6 ing to provide any of the following advanced life support techniques
7 unless the person who provided them was authorized by law to provide
8 them:

- 9 (1) electric cardiac defibrillation;
- 10 (2) administration of antiarrhythmic agents;
- 11 (3) intravenous therapy; or
- 12 (4) use of endotracheal intubation devices or esophageal
13 airway devices.

Position Paper

HB 552

For an Act entitled, "An Act relating to civil liability for emergency aid."

This bill would amend AS 09.65.090(a), "Civil liability for emergency aid," by granting immunity from liability to community health aides (CHAs) who render emergency care and emergency counseling to an injured, ill, or emotionally distraught person who reasonably appears to the CHA to be in immediate need of emergency aid in order to avoid serious harm or death.

Background

Until recently, it was widely assumed that CHAs had liability protection under federal tort claims for U.S. Public Health Service employees. However, last year the federal government determined that CHAs were not covered under federal tort claims since they are not employed by the federal government. Congress subsequently changed the law to cover employees of Native regional corporations established under the Indian Self-Determination Act (PL 93-638). However, there is still widespread confusion over whether CHAs are covered when they treat non-Native beneficiaries or whether the new law covers CHAs retroactively. There also is concern that CHAs who are not employed under PL 93-638 contracts are not covered. Native regional health corporations are investing thousands of dollars in malpractice insurance for CHAs and in legal fees to get legal opinions from the U.S. Justice Department. This is diverting health care dollars from direct services.

Under current arrangements, CHAs receive 40 hours of emergency trauma technician (ETT) training prior to going to session I of the CHA training program. Following sessions II and III of this training, some CHAs are trained and certified as emergency medical technician (EMT) I's (110 hours), and a few have been certified as EMT II's (50 additional hours) under AS 18.08.080. Once certified as EMTs by the Department of Health and Social Services, CHAs have some immunity from liability protections under AS 18.08.086.

Position

The Department of Health and Social Services supports the intent of this legislation but cannot support the bill as currently written. Although we recognize the need for liability protection for CHAs, the department believes this liability should not extend to procedures for which specialized training is required. The department proposes the following amendment to the bill to alleviate this concern:

Insert the following language at line 22 after the word "assistance".

. . . This immunity from liability protection would not apply to civil damages that result from providing or attempting to provide any one of the following advanced life support techniques, unless the community health aide is authorized by state law to provide them:

- (1) electric cardiac defibrillation,
- (2) administration of antiarrhythmic agents,
- (3) intravenous therapy, and
- (4) use of endotracheal intubation devices or esophageal airway devices.

The department supports HB 552 with this change.

Recommended by: *Elizabeth Ward*
 Elizabeth Ward, M.N.
 Director
 Division of Public Health

Date: 4/18/88

Approved by: *Myra M. Munson*
 Myra M. Munson
 Commissioner
 Department of Health and
 Social Services

Date: 4/18/88

FISCAL NOTE

REQUEST:

Revision Date: 3-30-88
Title: An Act relating to civil liability for emergency aid.
Sponsor: _____
Requestor: _____

Agency Affected: Health & Social Services
BRU: State Health Services
Components: EMS Training and Licensing

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

The enactment of HB 552 would have no direct fiscal impact on the Department of Health and Social Services.

Prepared by: Elizabeth Ward, Director *Elizabeth Ward* Phone: 465-3090
Division: Public Health Date: 4-18-88

Approved by Commissioner: Mike M. Munson *Mike M. Munson* Date: 4-18-88
Agency: Department of Health & Social Services

Distribution (by preparer):

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HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE
Chairman - Representative Dave Donley

P.O. BOX V, JUNEAU 99811

(907) 465-3892

April 18, 1988

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

RE: Support for HB 552 - "An Act relating to civil liability for emergency aid."

Following is a list of the people who called the House Labor and Commerce Committee stating their support of HB 552.

Grace Lincoln, Community Health Practitioner Program, 442-3311, x172.

Ron Gould, Director, Tanana Chiefs village health services, 452-2446.

Debra Caldera, Director, Community Health Aide Program, Yukon Health Group (Bethel), 543-4471.

Clarissa Carl, R.N., Health Dept. for the Aleutian Islands, 276-2700.

Lloyd Miller, Attorney for the Native Health Board, 258-6377.

Norma Jean Frank, Community Health Aide Educator, South East Alaska Regional Health Corporation (Sitka), 966-2459.

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May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House L?C:

April 21, 1988

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: . . . class size and workload. . .
subject to negotiation. . .
Sponsor: House HESS
Requestor: House Labor and Commerce

Agency Affected: Education
BRU: K-12 Support
Components: Foundation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		0				
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Technically this is a zero fiscal note. However, the bill holds potential for significantly increasing operating cost of school districts, a substantial portion of which is offset through the foundation program.

Prepared by: Steve Hole Phone: 465-2800
Division: Commissioner's Office Date: 4-18-88
Approved by Commissioner: William G. Demmert Date: 4-18-88
Agency: Department of Education

Distribution (by preparer):
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NEA-ALASKA

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(907) 586-3090

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2118 CUSHMAN STREET
FAIRBANKS, ALASKA 99701
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April 16, 1988

To: Rep. David Donley, Chair
Members, House Labor & Commerce Committee

Re: HB 556; "An Act adding class size and workload to the matters subject to negotiations between school boards and their certificated employees."

NEA-Alaska supports and encourages favorable consideration of this legislation by the Committee.

HB 556 puts in place a method for the resolution of the increasing class size and workload problems in our school districts but it does not impose a solution for them on the parties.

Anticipating that there may be resistance to this legislation by school boards and administrators it should be emphasized that HB 556 only establishes a mechanism to deal with the problems but leaves the solution to be developed at the local school district level.

The Kenai decision on the scope of teacher negotiations held that since there was not clear legislative intent language on the subject of negotiability, class size and workload should be considered as non-negotiable matters. Subsequent to this decision and with the recent decline in revenues available to public education, we have seen in many districts larger class sizes and substantially increased teacher workloads.

As a result, teachers as employees, have not had an effective means to deal with these critical issues.

In late February of 1988 you were provided with copies of the NEA-Alaska and PTA surveys of various districts around the state which clearly demonstrated increased class sizes and workloads.

The public clearly wants lower class sizes. Governor Cowper in his State of the State message encouraged that the

Legislature address the issue. Research consistently shows that lower class sizes enhance the learning potential and opportunity for each child. Smaller classes make more time available for individual instruction.

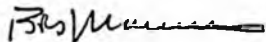
Because of the diversity of our state and the unique differences in school districts relative to their size and programs it is probably not realistically possible to legislate numbers relative to class size and workload which would adequately address this issue.

We feel that negotiability of the issue provides the potential to deal with the uniqueness of the problems and lends itself to the best potential for their resolution.

We encourage your support for this legislation.

Thank you for your consideration of our concerns.

Respectfully submitted,



Bob Manners
Executive Secretary

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