

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672  
5032 HRES SB 484 - SB 510

804

SECTION 1:

If, and only if, determined necessary by the Agricultural Revolving Loan Fund Board of Directors to maximize return on loans, the Board may modify the terms of notes and security instruments entered into or administered by the Agricultural Revolving Loan Fund.

SECTION 2:

Modification may reduce interest to rates below, and increase terms beyond, those specified in AS 03.10.030.

SECTION 3:

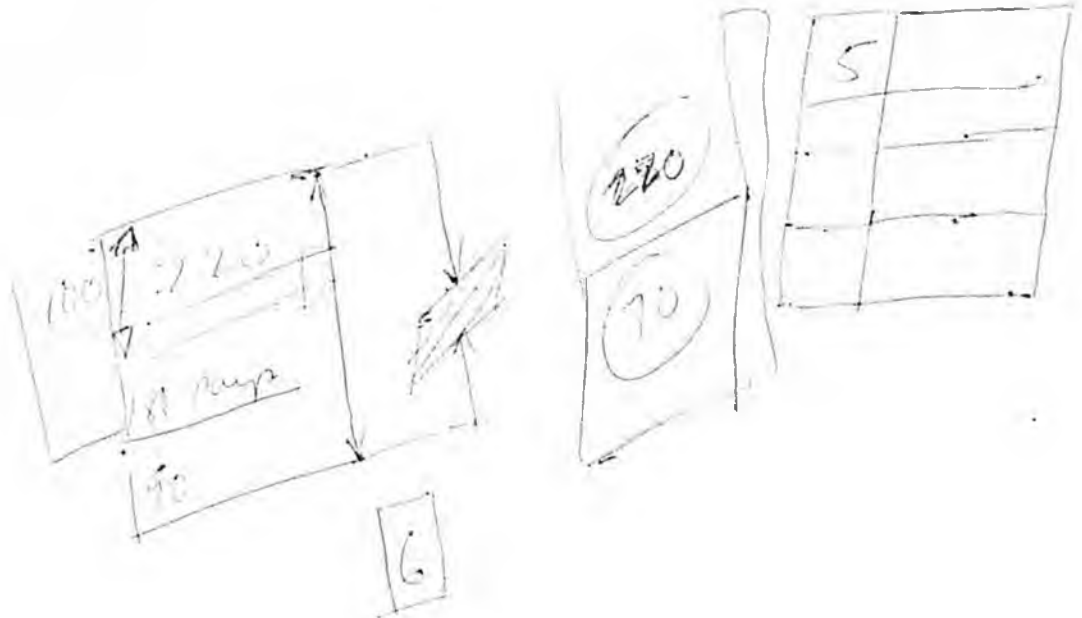
The terms of any modification under this Act shall be calculated to return not less than the amount of the original principal debt to the fund except as a credit for prepayment.

SECTION 4:

The maximum term of any modified loan shall be 30 years.

SECTION 5:

The effective date of this Act is retroactive to June 25, 1987.



RESTRUCTURED ARLF LOANS APPROVED BY BOARD

THROUGH 4/14/88

<u>ARFA</u>	<u>NAME</u>	<u>AMOUNT RESTRUCTURED</u>
Matanuska	Jenn	\$1,023,465
Delta	Miller, S.	175,462
Matanuska	Boyd	224,718
Delta	Karr	180,180
Delta	Moritz	64,606
Delta	Ditchen, C.	650,150
Delta	Golden Valley	454,003
Delta	Mertz	702,067
Delta	Carpenter	28,957
Delta	Shultz	480,263
Tanana	O'Donnell	21,244
Other	Mercer	31,526
Tanana	Shoen	193,626
Delta	Thuerenger	178,933
Matanuska	Baskin	813,838
Delta	Bradley	39,851
Delta	Alamasu	911,310
Matanuska	P&M Gardens	332,712
Matanuska	Williams, T.	418,119
Matanuska	Pherson	22,000
Delta	Robertson	106,138
	<u>Total</u>	<u>6,873,013</u>

# HOUSE COMMITTEE REPORT

(9)

Date referred: 5/4/88

FURTHER REFERRALS: Finance

DATE: 5-5-88

The Resources Committee has considered CSSB 484 (Fin) am

"An Act relating to the powers of and loans made by the Agricultural Revolving Loan Fund Board; and providing for an effective date."

**RECOMMENDS:**

- replace with HCS CSSB 484 (Res)  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:**

Sen GT

Gyula Havand

[Signature]

[Signature]

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**SIGNING OTHER RECOMMENDATIONS:**

Adelheid Herrmann No Rec.

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\_\_\_\_\_

Sen GT

Chairman's signature

FISCAL NOTE

REQUEST:

Revision Date: May 5, 1988  
Title: Powers of ARLF Board

Agency Affected: Natural Resources  
BRU: Ag Management

Sponsor: House Resources Committee  
Requestor: House Resources Committee

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	-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						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Carol Wilson  
Division: Commissioner's Office

Phone: 465-2400  
Date: 5/5/88

Approved by Commissioner: [Signature]  
Agency: Natural Resources

Date: 5/5/88

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

Original sponsor: Judiciary Committee  
by Request

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
2 HOUSE CS FOR CS FOR SENATE BILL NO. 484 (Resources)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the powers of and loans made by  
7 the Agricultural Revolving Loan Fund Board; and  
8 providing for an effective date."

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

10 \* Section 1. AS 03.10.050 is amended by adding new subsections to read:

11 (d) Subject to an appropriation for the position and to facili-  
12 tate execution of its duties, the Agricultural Revolving Loan Fund  
13 Board may appoint, supervise, and remove a financial analyst.

14 (e) To encourage the prompt payment of loans, the department may  
15 establish a program of credits for persons who have a loan from the  
16 agricultural revolving loan fund and maintain good financial standing.  
17 The credits may be applied against no more than two percentage points  
18 a year of the interest due on agricultural revolving loan fund loans.

19 (f) A credit may not be granted under (e) of this section to  
20 reduce interest due on a loan if the borrower has an agricultural loan  
21 in default, has a loan that has been rewritten, restructured, rolle  
22 over, or otherwise had its term extended or interest rate reduced, o  
23 has had a land payment or land clearing loan restructured.

24 (g) The director of agriculture may dispose of property acquire  
25 by the Agricultural Revolving Loan Fund Board or by the commissio  
26 through foreclosure, default, or other action arising out of agricul  
27 tural loans or the sale of agricultural land. Disposals shall b  
28 conducted under regulations approved by the commissioner. The regu  
29 lations shall ensure that the property is disposed of so as t

05150

1 maximize the return to the state and shall require that the parcels of  
2 land that are composed primarily of cropland soils be restricted to  
3 agricultural uses and disposed of only to persons who are residents of  
4 the state.

5 \* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the  
6 return to the state, the Agricultural Revolving Loan Fund Board may re-  
7 structure loans in existence on January 1, 1987, made by the board or by  
8 the Alaska Agricultural Action Council based upon guidelines approved by  
9 the board. The restructuring may only include reduction of interest to  
10 rates below those specified by AS 03.10.030, an extension of the term of  
11 the loan, and an improvement to the security interest of the state. It may  
12 not reduce the amount of principal and interest owed before the loan is re-  
13 structured.

14 (b) The maximum term of a loan modified under (a) of this section is  
15 30 years from the date of restructuring.

16 (c) Notwithstanding any other provision of this section, the Agricul-  
17 tural Revolving Loan Fund Board may approve an application for restructur-  
18 ing under this section only upon

19 (1) the applicant's written release of the state, including the  
20 Alaska Agriculture Action Council, the agricultural revolving loan fund,  
21 and the University of Alaska, from all potential liability for actions and  
22 omissions occurring before the date of restructuring that relate in any way  
23 to a state farm project, land sale, land sale relinquishment, farm loan, or  
24 loan application or loan modification application, whether granted or  
25 denied by the state; and

26 (2) assignment by the applicant to the board of the proceeds  
27 from the federal government under 7 U.S.C. 1442 (Conservation Reserve  
28 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

29 (d) If the board receives proceeds under (c)(2) of this section that

1 exceed the amount owed and credited to the loan during the year, the board  
2 shall refund the extra proceeds to the applicant.

3 \* Sec. 3. Notwithstanding AS 36.30, the commissioner of natural re-  
4 sources may negotiate with a cooperative composed of Alaska dairy farmers  
5 for the purchase by the cooperative of the assets of a foreclosed agricul-  
6 tural revolving loan fund loan that consists of the former Matanuska Maid  
7 Creamery, land, and building at 814 Northern Lights Boulevard in Anchorage.  
8 The same terms may include a lease-purchase arrangement. The goal of the  
9 sale is to provide long-term stability and strength for the Alaska dairy  
10 industry and for private ownership of the dairy. The commissioner may sell  
11 the creamery, land, and building including assets at less than fair market  
12 value if the commissioner determines that the sale would serve the best  
13 interest of the state. The authority provided by this section expires  
14 June 30, 1990.

15 \* Sec. 4. Section 3, ch. 109, SLA 1986, is repealed.

16 \* Sec. 5. Section 2 of this Act is retroactive to January 1, 1987.

17 \* Sec. 6. This Act takes effect immediately under AS 01.10.070(c).  
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*REDUCED FISCAL NOTE 21A*

5-1984P  
Bradley  
4/29/88

Original sponsor: Judiciary Committee  
by Request

1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 CS FOR SENATE BILL NO. 484 (Finance)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the powers of and loans made by  
7 the Agricultural Revolving Loan Fund Board; and  
8 providing for an effective date."

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

10 \* Section 1. AS 03.10.050 is amended by adding new subsections to read:

*OK*

11 (d) To facilitate execution of its duties, the Agricultural  
12 Revolving Loan Fund Board may appoint, supervise, and remove a finan-  
13 cial analyst.

*difficult  
to do  
but  
OK  
doing*

14 (e) To encourage the prompt payment of loans, the department may  
15 establish a program of credits for persons who have a loan from the  
16 agricultural revolving loan fund and maintain good financial standing.  
17 The credits may be applied against no more than two percentage points  
18 a year of the interest due on agricultural revolving loan fund loans.

19 (f) A credit may not be granted under (e) of this section to  
20 reduce interest due on a loan if the borrower has an agricultural loan  
21 in default, has a loan that has been rewritten, restructured, rolled  
22 over, or otherwise had its term extended or interest rate reduced, or  
23 has had a land payment or land clearing loan restructured.

24 (g) The director of agriculture shall dispose of property ac-  
25 quired by the Agricultural Revolving Loan Fund Board or by the commis-  
26 sioner through foreclosure, default, or other action arising out of  
27 agricultural loans or the sale of agricultural land. Disposals shall  
28 be conducted under regulations approved by the board. The regulations  
29 shall ensure that the property is disposed of so as to maximize the

1 return to the state and shall require that the parcels of land that  
2 are composed primarily of cropland soils be restricted to agricultural  
3 uses.

4 \* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the  
5 return to the state, the Agricultural Revolving Loan Fund Board may re-  
6 structure loans in existence on June 25, 1987, made by the board or by the  
7 Alaska Agricultural Action Council based upon guidelines approved by the  
8 board. The restructuring may only include reduction of interest to rates  
9 below those specified by AS 03.10.030, an extension of the term of the  
10 loan, and an improvement to the security interest of the state. It may not  
11 reduce the amount of principal and interest owed before the loan is re-  
12 structured.

13 (b) The maximum term of a loan modified under (a) of this section is  
14 30 years from the date of restructuring.

15 (c) Notwithstanding any other provision of this section, the Agricul-  
16 tural Revolving Loan Fund Board may approve an application for restructur-  
17 ing under this section only upon

18 (1) the applicant's written release of the state, including the  
19 Alaska Agriculture Action Council, the agricultural revolving loan fund,  
20 and the University of Alaska, from all potential liability for actions and  
21 omissions occurring before the date of restructuring that relate in any way  
22 to a state farm project, land sale, land sale relinquishment, farm loan, or  
23 loan application or loan modification application, whether granted or  
24 denied by the state; and

25 (2) assignment by the applicant to the board of the proceeds  
26 from the federal government under 7 U.S.C. 1442 (Conservation Reserve  
27 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended. *in SB 359*

28 (d) In order to provide an incentive and opportunity to continue milk  
29 production, the board shall restructure the debt of any dairy farm that has

CSSB 484(Fin)

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*max imp t*

*Halford is tracked sec. in SB 359  
discuss in Finance last year  
the Lt. said don't allow CRP  
recipients to repay restr.*

*restored how to pay back all fed 1 p -*

*SB 359 R. Guy*

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produced at least 30,000 pounds of milk a month since November 15, 1985, and continues to produce 30,000 pounds of milk a month. If milk production falls below 30,000 pounds a month, the restructured debt shall become immediately due and payable. Restructure under this section is subject to the same limitations and conditions as provided in (a), (b), and (c) of this section.

\* Sec. 3. Section 2 of this Act is retroactive to June 25, 1987.

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

Jerry Weiland

745-3071

APR 05 '88 09:46 TDS RICHIE

Original sponsor: Judiciary Committee  
by Report

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 100 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the restructure of AS 03.10 the  
7 the agricultural revolving loan fund; granting the  
8 Agricultural Revolving Loan Fund Board authority to  
9 hire ~~an analyst~~ <sup>a financial analyst</sup>  
10 and providing for an effective date."

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

12 \* Section 1. AS 03.10.050 is amended by adding new subsection (d) as follows:

13 (d) To facilitate execution of its duties, the Agricultural  
14 Revolving Loan Fund Board may

15 (1) appoint, supervise, and remove ~~an analyst~~ <sup>an analyst</sup>  
16 analyst, ~~and maintain good financial standing.~~

17 ~~and maintain good financial standing.~~

18 (e) To encourage the prompt payment of loans, the ~~Department~~ <sup>Department</sup>  
19 shall establish a program of credits for persons who have a loan from  
20 the agricultural revolving loan fund <sup>and maintain good financial standing.</sup> The credits shall be applied  
21 against ~~two~~ two percentage points a year of the interest due  
22 on agricultural revolving loan fund loans.

23 (f) A credit may be granted under (e) of this section to reduce  
24 interest due on a loan only if that loan is not in default and has not been  
25 rewritten, restructured, rolled over, or otherwise had its term extended or  
26 interest rate reduced.

27 \* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) ~~in the findings of the Department of Natural Resources and~~

The Agricultural Revolving Loan Fund Board may restructure loans, subject upon guidelines approved by the Department, for a term not to exceed 30 years from the date of restructuring. Restructuring may include extension and modification of loan terms and conditions, ~~including and~~ reduction of interest to rates below those specified by AS 03.10.030, but not less than the amount of principal to be repaid.

If determined necessary by the Board to maximize return on loans, the Board may compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of contracts, agreements, leases, and security instruments entered into or administered by the Agricultural Revolving Loan Fund. This authority shall be in addition to the Board's authority to restructure loans.

The maximum term of any compromised, adjusted, reduced, or modified loan shall be 30 years.

The Agricultural Revolving Loan Fund Board shall restructure over a 30-year term the debt of an applicant who has produced raw milk in the state at an average monthly rate of 30,000 pounds or more of raw milk since November 16, 1986.

(c) ~~(b)~~ Recognizing that claims have been made against the state that arise out of the formulation and implementation of state farm projects or the granting or denial of farm loans, but without making a finding on the merits of these and related claims, the Agricultural Revolving Loan Fund Board shall condition approval of an application for restructuring under this section upon the applicant's release of the state, including the Alaska Agriculture Action Council, the agricultural revolving loan fund,

and the University of Alaska, from all liability for actions and omissions occurring before the date of restructuring that relate in any way to a state farm project, land sale, land sale relinquishment, farm loan, or loan application or loan modification application, whether granted or denied by the state.

\* Sec. 3. The authority granted in sec. 2 of this Act ~~is~~ shall be in addition to that granted by AS 03.10.020(a)(4) and AS 03.10.020(c), and is retroactive to June 25, 1987.

\* Sec. 4. Section 4, ch. 109, SLA 1986, is amended to read:

Sec. 4. This Act is repealed July 1, 1990 [1988].

\* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

5-1984M

Bradley  
5/4/88

Original sponsor: Judiciary Committee  
by Request

1 IN THE SENATE BY THE RESOURCES COMMITTEE  
 2 HOUSE CS FOR CS FOR SENATE BILL NO. 484 (Resources)  
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
 4 FIFTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the powers of and loans made by  
 7 the Agricultural Revolving Loan Fund Board; and  
 8 providing for an effective date."

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

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11 (d) Subject to an appropriation for the position and to facili-  
 12 tate execution of its duties, the Agricultural Revolving Loan Fund  
 13 Board may appoint, supervise, and remove a financial analyst.

14 (e) To encourage the prompt payment of loans, the department may  
 15 establish a program of credits for persons who have a loan from the  
 16 agricultural revolving loan fund and maintain good financial standing.  
 17 The credits may be applied against no more than two percentage points  
 18 a year of the interest due on agricultural revolving loan fund loans.

19 (f) A credit may not be granted under (e) of this section to  
 20 reduce interest due on a loan if the borrower has an agricultural loan  
 21 in default, has a loan that has been rewritten, restructured, rolled  
 22 over, or otherwise had its term extended or interest rate reduced, or  
 23 has had a land payment or land clearing loan restructured.

24 (g) <sup>add</sup> The director of agriculture may dispose of property acquired  
 25 by the Agricultural Revolving Loan Fund Board or by the commissioner  
 26 through foreclosure, default, or other action arising out of agricul-  
 27 tural loans or the sale of agricultural land. Disposals shall be  
 28 conducted under regulations approved by the commissioner. The regu-  
 29 lations shall ensure that the property is disposed of so as to

1 maximize the return to the state and shall require that the parcels of  
2 land that are composed primarily of cropland soils be restricted to  
3 agricultural uses.

4 \* Sec. 2. RESTRUCTURE OF AGRICULTURAL DEBT. (a) To increase the  
5 return to the state, the Agricultural Revolving Loan Fund Board may re-  
6 structure loans in existence on January 1, 1987, made by the board or by  
7 the Alaska Agricultural Action Council based upon guidelines approved by  
8 the board. The restructuring may only include reduction of interest to  
9 rates below those specified by AS 03.10.030, an extension of the term of  
10 the loan, and an improvement to the security interest of the state. It may  
11 not reduce the amount of principal and interest owed before the loan is re-  
12 structured.

13 (b) The maximum term of a loan modified under (a) of this section is  
14 30 years from the date of restructuring.

15 (c) Notwithstanding any other provision of this section, the Agricul-  
16 tural Revolving Loan Fund Board may approve an application for restructur-  
17 ing under this section only upon

18 (1) the applicant's written release of the state, including the  
19 Alaska Agriculture Action Council, the agricultural revolving loan fund,  
20 and the University of Alaska, from all potential liability for actions and  
21 omissions occurring before the date of restructuring that relate in any way  
22 to a state farm project, land sale, land sale relinquishment, farm loan, or  
23 loan application or loan modification application, whether granted or  
24 denied by the state; and

25 (2) assignment by the applicant to the board of the proceeds  
26 from the federal government under 7 U.S.C. 1442 (Conservation Reserve  
27 Program) and P.L. 88-26 (Feed Grain Act of 1963), as amended.

28 (d) If the board receives proceeds under (c)(2) of this section that  
29 exceed the amount owed and credited to the loan during the year, the board

1 shall refund the extra proceeds to the applicant.

2 \* Sec. 3. Section 3, ch. 109, SLA 1986, is repealed.

3 \* Sec. 4. Section 2 of this Act is retroactive to January 1, 1987.

4 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

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add a new

Sec. 3 and renumber.

Sec. 3 Notwithstanding Art 36.30, the Commissioner of natural resources may negotiate with the dairy farmers' cooperative for the sale of the <sup>assets</sup> ~~estate~~ Matakuska Maid ~~estate~~ creamery, land, and building at 814 Northern Lights Boulevard, in Anchorage. The sale terms may include a lease-purchase arrangement. The objective of the sale should be to provide long-term stability and strength for the Alaskan dairy industry, and private ownership of the dairy. The commissioner may sell the creamery, land, and building at less than fair market value as long as the sale would serve the best interest of the state. The authority provided by this section shall expire on June 30, 1990.

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#1

~~POST~~

add a new

Sec. 3 and renumber.

Sec. 3 Notwithstanding AS 36.30, the commissioner of natural resources may negotiate with the dairy farmers' cooperative for the sale of the <sup>former</sup> Matanuska Maid ~~creamery~~ creamery, land, and building at 814 Northern Lights Boulevard, in Anchorage. The sale terms may include a lease-purchase arrangement. The objective of the sale should be to provide long-term stability and strength for the Alaska dairy industry, and private ownership of the dairy. The commissioner may sell the creamery, land, and building at less than fair market value as long as the sale would serve the best interest of the state. This authority provided by this section shall expire on June 30, 1990.

Drue's comment

p. 2 - top - All purchasers only - land.

# STATE OF ALASKA

## DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER

SB 484 files  
STEVE COWPER, GOVERNOR

400 WILLOUGHBY AVE.  
JUNEAU, ALASKA 99801-1796  
PHONE: (907) 465-2400

May 5, 1988

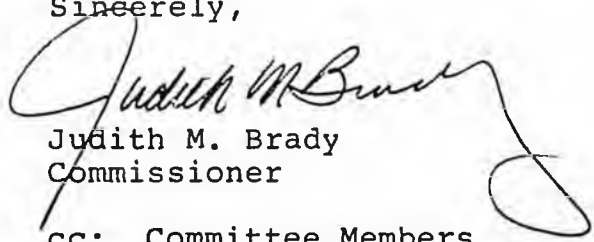
The Honorable Sam Cotten  
Co-Chair, House Resources Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Cotten:

I appreciate the House Resources Committee's consideration of agricultural problems and support the committee's substitute of SB 484. I assure you that the Department of Natural Resources and the Agricultural Revolving Loan Fund Board will not sell the Matanuska Maid Creamery during the one-year term of the creamery management agreement with Alaska Dairy, Inc. We hope that in one year Point MacKenzie farm operations will have stabilized to the point where dairy farmers are able to take on the obligation of a creamery purchase.

Please let me know if you would like additional information about the creamery.

Sincerely,

  
Judith M. Brady  
Commissioner

cc: Committee Members  
Rod Swope  
Ron Clarke  
Bcb Evans  
Mark Weaver  
Senator Kerttuia  
Senator Szymanski  
Representative Menard  
Representative Larson

Explanation for Revised Fiscal Note

*from Joe Cuye*

CSSB 472 (Resources)

<u>FY 89</u>		<u>FY 90-93</u>
156.0	Lease Income	156.0 Lease Income
(148.2)	Loss of Opportunity for Sale	(148.2) Loss of Opportunity
(230.0)	Depreciation	(230.0) Depreciation
(3000.0)	Loss of Capital Improvements	
<hr/>		
(3222.2)	Loss for FY 89	(222.2) Loss per year FY 90-93

Lease payment income is projected to be \$156,000 per year (\$13,000 per month). The loss in income from immediate sale of the land and buildings in Anchorage over 20 years at 8% for the current tax value (March, 1988) is \$1,475,500 (\$148,200 per year). The loan fund would receive no repayment for the contribution of over 3,000,000 in operating capital and plant improvements during the last three years.

The recently incorporated cooperative that is seeking to lease/purchase the creamery has no assets and no financial capacity to provide operating capital or plant maintenance. The exposure to the State of Alaska as owner of the facility would include working capital of 3,000,000 and replacement of equipment based on depreciation of \$230,000 per year for 15 years to offset obsolescence and provide for future expansion.

Alternative Fiscal Note - April 30, 1988

	<u>FY'89</u>	<u>FY'90-93</u>
Lease-purchase payment	156.0	156.0
Reduction of state investment in plant	230.0	230.0
Loss of opportunity for sale*	(192.0)	(192.0)
	<hr/>	
Cash flow benefit to ARLF	194.0	194.0

\* Based upon 8% interest rate and estimate value of \$2,400,000

Mr. Joseph P. Cange  
P.O. Box 90647  
Anchorage, Alaska 99509

April 30, 1988

The Honorable Sam Cotten  
Co-Chair  
House Resources Committee  
Alaska House of Representatives  
P.O. Box V  
Juneau, Alaska 99811

RE: Senate Bill 472, An Act Authorizing the Department of  
Natural Resources to Transfer the Creamery Formerly  
Owned by Matanuska Maid, Inc.

Dear Representative Cotten:

Enclosed for your reference and review, please find a summary of my March 24 presentation to the Senate Finance Committee. In the summary, I have shown the reasons why this bill is critical for the survival of the Alaska dairy industry and, at the same time, I have detailed the cost benefits of SB 472 to Alaska and all Alaskans.

At minimum, SB 472 means jobs for Alaskans and it removes government from business. It provides for the dairy cooperative to lease the real estate and purchase the operating assets from the ARLF for 100% of the value of inventory, receivables, etc.; thus, the ARLF recoups its past investment in the creamery.

There are perhaps other ways to accomplish the transfer of the creamery but, I honestly believe, that there is no better way for the ARLF, Alaskans or dairy farmers than SB 472.

I believe that three and a half years of state control is more than enough and that now it is time to permit the farmers, whose very livelihood is dependent upon this creamery, to have an opportunity to "control their own destiny." Not unlike the thirteen colonies which "believed that their destiny should not be controlled by arbitrary dictation by bureaus in England, too far off to decide rightly and too little interested to have genuine concern,"

The Honorable Sam Cotten  
April 30, 1988  
Page Two

these twelve dairy farmers should have the right to self-determination. I believe that history will prove that in passing SB 472 you will have made the right decision.

I have also enclosed an "alternative fiscal note" which shows that there is a cash flow benefit to the ARLF of \$194,000 per year. This is submitted to refute the fiscal note prepared by DNR which showed a \$3,222,200 fiscal cost during 1989.

SB 472 is a fair, objective and equitable bill and, therefore, I ask your support.

Thank you very much for your time and consideration. I would be pleased to answer any questions that you have regarding this issue.

Sincerely,

Joseph Patrick Cange

Enclosure

cc: Members, House Resources Committee

RESTRUCTURE EXAMPLE

Restructure \$1,000,000 30 year term \$36,000/yr.  
under ARLF Guidelines 8% \$1,080,000 Total

Restructure \$1,000,000 30 year term \$35,333/yr.  
under ARLF Guidelines with Credit 2% \$1,059,999 Total

Rewrite \$1,000,000 30 year term \$80,000/yr.  
standard payments 8% \$2,640,000 Total

Rewrite \$1,000,000 30 year term \$71,946.12/yr.  
standard payments 8% with 2% Credit \$2,158,383.60 Total



# Alaska State Legislature

HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES

POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-3715

HOUSE RESOURCES COMMITTEE

LETTER OF INTENT

HCS CSSB 484 (Res)

It is the intent of the Legislature that the board of the Agricultural Revolving Loan Fund will restructure loans when the applicant is able to make a reasonable showing of the need for a restructuring. The Legislature strongly urges the Board to adopt a restructuring policy that will show the sensitivity needed for the agricultural industry to grow stronger over the long term. Farmers now substantially delinquent deserve the Board's immediate attention toward restructuring.

ADOPTED: \_\_\_\_\_, Co-Chair

DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
 Title: Powers of & loans made by  
Aq Revolving Loan Fund Board  
 Sponsor: Senate Judiciary/Request  
 Requestor: Senate Finance Committee

Agency Affected: Dept of Natural Resources  
 BRU: Agricultural Management  
 Components: ARLF

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES		57.6	57.6	57.6	57.6	57.6
TRAVEL		3.0	3.0	3.0	3.0	3.0
CONTRACTUAL		-0-	-0-	-0-	-0-	-0-
SUPPLIES		1.0	1.0	1.0	1.0	1.0
EQUIPMENT		-0-	-0-	-0-	-0-	-0-
LAND & STRUCTURES		-0-	-0-	-0-	-0-	-0-
GRANTS, CLAIMS		-0-	-0-	-0-	-0-	-0-
MISCELLANEOUS		-0-	-0-	-0-	-0-	-0-
TOTAL OPERATING		61.6	61.6	61.6	61.6	61.6

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER		61.6	61.6	61.6	61.6	61.6
TOTAL		61.6	61.6	61.6	61.6	61.6

POSITIONS:

FULL-TIME		1	1	1	1	1
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Funds one Administrative Officer III, PFT/Palmer, at Range 21/A from the Agricultural Revolving Loan Fund.

*Rick Halford*

Prepared by: \_\_\_\_\_  
 Division: Senator Rick Halford, Co-chairman  
Senate Finance Committee

Phone: 465-3753  
 Date: April 29, 1988

Approved by Commissioner: \_\_\_\_\_  
 Agency: \_\_\_\_\_

Date: \_\_\_\_\_

Distribution (by preparer):

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

SB 487

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AN ACT

Relating to the reorganization of private debt at a  
Delta Project.

\* Section 1. LEGISLATIVE FINDINGS. The legislature finds that the large grain farms that were developed on state agricultural land in the Delta Projects are subject to a personal debt load that is unmanageable because of a coincidence of unique and unforeseen circumstances:

- (1) the unforeseen difficulties with the limited growing seasons including the extremely short period in which the crops may be planted;
- (2) conflicts with the herds of bison located in the area;
- (3) the inadequate agricultural infrastructure in the area of the Delta Projects and in the state;
- (4) the depressed grain prices nationwide;
- (5) the unexpected problems with economic farm size.

\* Sec. 2. (a) The commissioner of natural resources shall, at the request of an individual who holds agricultural rights to land purchased from the state in a Delta Project,

- (1) accept the relinquishment of agricultural land purchased from the state in a Delta Project and credit the percentage of the debt owed to the state on land purchased and land clearing loans that equals the percentage of land relinquished under this section, either by acreage or by value, as determined by the commissioner;
- (2) enter into an agreement with the individual for the lease for agricultural purposes only of a portion of or all of the land

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1 relinquished for a term of 20 years at the full fair market value of the  
2 land; a survey under this paragraph, if required, shall be at the expense  
3 of the individual.

4 (b) If an individual who has relinquished land under this section  
5 applies before July 1, 1987 for a lease on all or part of the land relin-  
6 quished, the lease shall provide the lessee an option to purchase the land  
7 leased under (a)(2) of this section at full fair market value at the time  
8 of purchase without reduction to reflect the remaining lease term.

9 (c) The commissioner of natural resources in consultation with the  
10 Agricultural Revolving Loan Board may renegotiate with the individual loans  
11 for chattels or farm improvements located on the agricultural land in a  
12 Delta Project if the commissioner determines that renegotiation is neces-  
13 sary to minimize financial losses to the state and that it is in the best  
14 interest of the state.

15 \* Sec. 3. The provisions of this Act are not available to an individual  
16 participating in a federal farm program that provides monetary or other  
17 incentives for keeping agricultural land in a Delta Project out of produc-  
18 tion.

19 \* Sec. 4. This Act is repealed July 1, 1988.

Eff. 9/5/86

# MEMORANDUM

State of Alaska

DEPARTMENT OF LAW

TO: Judith M. Brady, Commissioner  
Department of Natural Resources  
Mark Weaver, Director  
Division of Agriculture  
Board of Directors  
Agricultural Revolving Loan Fund

DATE: April 25, 1988

FILE NO: 661-87-0376

TELEPHONE NO: 276-3550

THRU: SUBJECT: ARLF Restructuring Guidelines

*Bonnie Robson*

FROM: Bonnie Robson  
Assistant Attorney General  
Commercial Section-Anchorage

The issue addressed by this memorandum is whether the Department of Natural Resources (DNR), Division of Agriculture (DOA), or Agriculture Revolving Loan Fund Board of Directors (ARLF Board) has authority to adopt and implement a program that extends the terms for, reduces the interest rates on, and forgives part of the principal of delinquent ARLF loans. The specific program giving rise to the need for this letter is described in the June 25, 1987 ARLF Board Guidelines for Restructuring (the Guidelines). 1/ For the reasons discussed below, DNR, DOA, and ARLF Board do not have authority to adopt and implement the Guidelines.

## I. BACKGROUND INFORMATION

The Agriculture Revolving Loan Fund (the fund) was created by statute "to promote the more rapid development of agriculture as an industry . . . by means of long-term low-interest loans" for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. AS 03.10.010, AS 03.10.030. DNR, in conjunction with the ARLF Board, made these types of farm loans under AS 03.10.010 et seq. from the fund's inception to present. Seventy-five percent of the loans became delinquent. In an effort to maximize return to the fund and minimize the number of farm foreclosures, DNR, DOA, and the ARLF Board conducted public hearings statewide, then adopted the Guidelines. Most notably, the Guidelines allow a delinquent borrower to: (1) aggregate loan balances, then repay 1/20th of the aggregate in each of the next 20 years; (2)

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1/ A copy of the Guidelines is attached.

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pay 8 percent interest per year on 1/20th of the aggregate, but no interest on the remaining balance; and (3) have 1 percent of the aggregate forgiven for repaying the rewritten debt in 19 years instead of 20 years (2 percent forgiven for repayment in 18 years, 3 percent for 17 years, etc.).

Former Assistant Attorney General Joan Travostino issued an unpublished memorandum of advice on December 7, 1987 approving adoption and implementation of the Guidelines. Between December 7, 1987 and April 11, 1988, the ARLF Board approved 19 applications submitted under the Guidelines, finalized six of the 19 approved, and denied 22 applications. Another 60 applications remain to be considered.

## II. THE STATUTES

The Alaska Agricultural Loan Act (AS 03.10.010 et seq.) authorizes making loans for farm development, irrigation, farm product processing, land clearing, purchase of chattels, and operating expenses. Farm development and irrigation loans "may not exceed a term of 30 years" and "shall bear interest at a rate that may not be less than 8 percent ...." AS 03.10.030(a)(4). Farm product processing loans "may not exceed a term of 30 years or bear interest that is less than 8 percent a year." AS 03.10.030(f). Land clearing loans "may not ... have a term in excess of 20 years" and "may not ... bear interest that is less than 8 percent." AS 03.10.030(g). "[A] chattel loan may not exceed a term of seven years" (AS 03.10.030(a)(1)) and "shall bear interest at a rate that may not be less than 8 percent ...." (AS 03.10.030(a)(4)). Operating loans are "to be amortized within one year" (AS 03.10.030(c)); no interest rate is specified by statute for operating loans.

There are only two statutory provisions for deviation from the maximum terms of loans or minimum interest rates for loans. A one-year operating loan "may be extended for up to three years by the Agricultural Revolving Loan Fund Board, in the discretion of the Board." AS 03.10.030(c). And DNR may "establish amortization plans for repayment of loans, which may include delayed payments of principal and interest for not to exceed five years." AS 03.10.020(a)(4).

## III. STATUTORY INTERPRETATION AND APPLICATION

Three principles of statutory interpretation are pertinent: (a) "shall" and "may not" are mandatory, (b)

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administrative bodies have only those powers given them by the legislature, and (c) inclusion of specific powers presumptively excludes those not enumerated.

A. "Shall" And "May Not" Are Mandatory

By statute, each farm loan "shall bear interest at a rate that may not be less than 8 percent." And, depending on the type of loan, each farm loan "may not exceed a term of [X] years," where X is 1, 7, 20, or 30. AS 03.10.030 (emphasis added).

According to the Alaska Supreme Court, "the use of the word 'shall' in a statute denotes mandatory intent." Fowler v. City of Anchorage, 583 P.2d 817, 820 (Alaska 1978). 2/

The Alaska Supreme Court has not interpreted the words "may not." However, 2A C. Sands, Sutherland Statutory Construction, § 57.09 (4th ed. 1984) states:

One of the strongest indications of what construction should be given a statutory provision may be found in the use of negative [or] prohibitory ... words. Where statutory restrictions are couched in negative terms they are usually held to be mandatory.

"May not" is negative or prohibitory, and hence mandatory.

Applying these rules of statutory construction to AS 03.10.030, one must conclude that the maximum loan terms of 1, 7, 20, and 30 years are mandatory, as is the minimum interest rate of 8 percent per year. Being mandatory, DNR, DOA, and the ARLF Board cannot extend a loan's term beyond the statutory maximum or reduce its interest rate below the statutory minimum.

B. Administrative Bodies Have Only Those Powers Given Them By The Legislature

DNR, DOA, and the ARLF Board are administrative

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2/ Unless the context otherwise indicates, which is not the case here.

Judith M. Brady  
Mark Weaver  
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agencies or boards. Administrative bodies are purely creatures of legislation without inherent or common law powers. As a general rule, administrative bodies are entitled to exercise only those powers as are conferred on them by the legislature, expressly or by necessary implication. 2A C. Sands Sutherland Stat. Const. § 65.01 (4th ed. 1984).

The federal Agricultural Credit Act of 1978 provides an example of an express grant of power from a legislature to an administrative body to extend the term of a loan, reduce its interest rate, and forgive principal (among other things). 7 USC § 1981(d) states:

The Secretary [of Agriculture] may ... compromise, adjust, reduce, or charge-off claims, and adjust, modify, subordinate, or release the terms of security instruments, leases, contracts, and agreements entered into or administered by the Farmers Home Administration under any of its programs, as circumstances may require .... The Secretary may release borrowers or others obligated on a debt incurred under this chapter from personal liability with or without payment of any consideration at the time of the compromise, adjustment, reduction, or charge-off of any claim, except that no compromise, adjustment, reduction, or charge-off of any claim may be made or carried out ... on terms more favorable than those recommended by the appropriate county committee ....

Unlike the federal Agricultural Credit Act, the Alaska Agricultural Loan Act (AS 03.10.010 et seq.) does not expressly confer powers on any administrative body to extend the term of a loan, reduce its interest rate, or forgive principal, except that: (1) the ARLF Board may extend a one-year operating loan for up to three years (AS 03.10.030(c)), and (2) DNR may establish amortization plans which may include delayed payments of principal and interest for up to five years (AS 03.10.020(a)(4)).

Whether or not the Alaska Agricultural Loan Act vests DNR, DOA, or the ARLF Board with the powers in question by implication is a more difficult issue.

[T]o authorize the supplying of a power by implication . . . it is not sufficient that the act is

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advantageous or convenient to the major power conferred, or even effectual in the exercise of it. The power to be supplied by such process must be practically indispensable and essential in order to execute the power actually conferred.

2A C. Sands, Sutherland Stat. Const., § 55.03 (4th ed. 1984).

The ARLF Board has by implication the power to draft and require fund borrowers to sign promissory notes and security instruments, as this power is "practically indispensable and essential in order to execute" its express power to make farm loans. However, extending the terms of loans beyond the mandatory maximum, reducing interest rates below the mandatory minimum, and forgiving principal <sup>3/</sup> would be contrary to the express statutory language. Furthermore, these powers are not "practically indispensable and essential in order to execute" the express power to make farm loans. Consequently, the power to make these changes cannot be implied. This remains true even though the powers in question are advantageous and convenient to the power to lend, and effectual in the exercise of the power to lend.

C. Inclusion Of Specific Powers Excludes Those Not Enumerated

In Burrell v. Burrell, 696 P.2d 157, 165-166 (Alaska 1984), the Alaska Supreme Court interpreted an Alaska statute unrelated to agriculture. Nonetheless, the rule of interpretation established in Burrell is controlling here:

The court's power to modify a final judgment in a divorce suit is limited by the terms of AS 09.55.226 to those arrangements providing for the support and care of minor children, alimony and maintenance payments. It is an accepted rule of statutory construction that to include specific terms presumptively excludes those which are not

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3/ Whether or not DNR or the ARLF Board has authority to forgive principal is answered in the negative by the January 31, 1986 memorandum of advice of Assistant Attorney General John McDonagh. A copy of that memorandum is attached.

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enumerated. 2A C. Sands, Sutherland Statutory Construction §§ 47.23-47.24 (4th ed. 1973). In keeping with this precept, we have held that "AS 09.55.220 does not give a court authority to modify a decree as it relates to property rights ...." Allen v. Allen, 645 P.2d 774, 776 (Alaska 1982); Stone v. Stone, 647 P.2d 582, 584-585 (Alaska 1982).

(Emphasis added, footnote omitted.)

The Alaska Agricultural Loan Act expressly grants administrative bodies certain powers to vary terms of repayment. AS 03.10.030(c), AS 03.10.020(a)(4). Under the most liberal interpretation, these provisions allow the ARLF Board to extend an operating loan from one to three years, and allow DNR to delay the due dates for principal and interest on farm development, irrigation, farm product processing, land clearing, and chattel loans for five years. Under the Burrell, supra, rule of statutory construction, the legislature's inclusion of language allowing administrative bodies to extend the terms of operating loans by an additional two years beyond the otherwise mandatory maximum of one year, and to delay for up to five years the due dates for other farm loans, presumptively excludes related but not enumerated powers, such as powers to extend the terms of 7 year chattel loans and 20 year land clearing loans beyond those maximum periods, respectively, reduce interest rates from 8 percent to an effective rate of less than 1 percent, and forgive principal.

#### IV. PRIOR OPINION APPROVING ADOPTION AND IMPLEMENTATION OF GUIDELINES

As noted earlier, former Assistant Attorney General Joan Travostino's December 7, 1987 unpublished memorandum of advice approved adoption and implementation of the Guidelines. A copy of that memorandum is attached.

The approval contained in that memorandum was reached by reviewing federal regulations on servicing farm loans, noting that extending terms and reducing interest rates are labelled as "loan servicing functions," and concluding that the Alaska Agricultural Loan Act implicitly grants ARLF the power to perform these "loan servicing functions" where necessary to maximize returns on loans.

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As noted in Part III, above, by statute Congress expressly granted DNR's federal counterpart authority to extend terms, reduce interest rates, and forgive principal. 7 U.S.C. § 1981(d). This federal statute enabled promulgation of those "loan servicing" regulations which allow term extension and interest rate reduction. The statute, and not the "loan servicing function" label, provides authority. To the extent inconsistent with this opinion, the December 7, 1987 memorandum is superceded.

#### V. INTERPRETATION OF STATE REGULATION

Regulations have been promulgated under the Alaska Agricultural Loan Act. One regulation specifically addresses modification of loan terms. 11 AAC 39.311 states:

OTHER LOAN ACTIONS BY BOARD. (a) ... [A] change in loan terms will not be granted without the approval of a majority of the board ....

(b) A change in loan terms includes, but is not limited to, a change in interest rate, loan amount, maturity date, amortization schedule, payment date, or collateral ....

A regulation is valid only if consistent with the statute under which it was promulgated. AS 44.62.030. See Kalmakoff v. State Commercial Fisheries, 693 P.2d 844, 853 (Alaska 1985); 1A C. Sand Sutherland Stat. Const. § 31.02 (4th ed. 1985). Therefore, 11 AAC 39.311 must be read in conjunction with the Alaska Agricultural Loan Act and interpreted so as to be consistent with that act. When so read and interpreted, we believe 11 AAC 39.311 allows the ARLF Board to reduce a theoretical borrower's interest rate from, say, 10 percent to the minimum statutory rate of 8 percent, or extend the maturity date of a five-year chattel loan to the maximum statutory term of seven years. <sup>4/</sup> However, it cannot be read to permit the ARLF Board to change the term of a loan in a manner which would be inconsistent with express statutory limitations on the various loan terms. Also 11 AAC 39.311

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<sup>4/</sup> These powers are of little practical value since all farm loans have been made at the minimum interest rate, and almost all at the maximum term.

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may not be interpreted to allow a "change in ... loan amount" through principal forgiveness, since statutory authority to forgive principal is lacking. 5/

#### VI. CONSEQUENCE OF LACK OF AUTHORITY

Whether DNR, DOA, and the ARLF Board possess authority to implement the Guidelines may be the subject of litigation. Three potential formats for litigation are discussed below; others may exist. The discussion below is included only to reveal potential losses and liabilities; it should not be interpreted as an endorsement of allegations that could be made by adverse parties or as an admission of liability.

##### A. ARLF Sues Borrower on Restructured Debt

ARLF has already restructured six borrowers' debts. Should one of these borrowers stop making payments on the debt as restructured, the Attorney General's Office would file a debt collection action on behalf of ARLF to enforce the restructured note and security instruments. The borrower might raise as a defense the administrative bodies' lack of statutory authority to execute the restructured note and security instruments.

Contracts that violate statutes might be unenforceable. Were the restructured note and security instruments entered into by two private parties, an Alaska court would apply the Restatement (Second) of Contracts § 178 to determine enforceability. Brown v. Baker, 688 P.2d 943 (Alaska 1984). The Restatement provides:

#### § 178. When a Term is Unenforceable on Grounds of Public Policy

(1) A promise or other term of an agreement is unenforceable on grounds of public policy if legislation provides that it is unenforceable or the interest in its enforcement is clearly outweighed in the circumstances by a public policy against the enforcement of such terms.

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5/ See footnote 3.

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(2) In weighting the interest in the enforcement of a term, account is taken of

(a) the parties' justified expectations,

(b) any forfeiture that would result if enforcement were denied, and

(c) any special public interest in the enforcement of the particular term.

(3) In weighing a public policy against enforcement of a term, account is taken of

(a) the strength of that policy as manifested by legislation or judicial decisions,

(b) the likelihood that a refusal to enforce the term will further that policy,

(c) the seriousness of any misconduct involved and the extent to which it was deliberate, and

(d) the directness of the connection between that misconduct and the term.

However, the parties to restructuring are not both private. The highest courts of other states hold that contracts between a governmental entity and private party which violate a statute are not subject to a balancing test, but are void and unenforceable. Chemical Bank v. Washington Public Power Supply System, 666 P.2d 329, appeal after remand 691 P.2d 524, certiorari denied Haberman v. Chemical Bank, 105 S.Ct. 2140, 471 U.S. 1065, 85 L.Ed.2d 497 and 105 S.Ct. 2154, 471 U.S. 1075, 85 L.Ed.2d 510; Noel v. Cole, 655 P.2d 245 (Washington 1982); First Equity Corp. of Florida v. Utah State Univ., 544 P.2d 887 (Utah 1975); Martin v. City of Corning, 101 Cal. Rptr. 678 (Cal. App. 1972).

The Alaska Supreme Court has not clearly stated whether it will apply Restatement (Second) of Contracts §178 or the rule employed by other states' courts when one of the parties to an illegal contract is a governmental entity. However, a recent opinion suggests the latter, which would render void the restructured notes and security instruments. McBirney &

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Associates v. State of Alaska, P.2d \_\_\_\_, Op. No. 3298 (Alaska, April 15, 1988) ("The state has an established procurement process which includes competitive bidding .... McBirney's conduct violated the state's procurement process and the resulting contract was void.") See also King v. Alaska State Housing Authority, 512 P.2d 887, 891 (Alaska 1973). ("A public corporation cannot bind itself to any contract which is beyond the scope of its powers.")

Should the restructured notes and security instruments be held void, then ARLF could only sue delinquent borrowers on their original notes and security instruments. However, claims on many of the notes and instruments might soon be barred by the applicable statutes of limitations. There will be no recovery on claims barred.

B. ARLF Sues Borrower On Original Debt

Should ARLF sue a restructured borrower on his original notes and security instruments, the borrower will claim that, in reliance on ARLF's representation that his debt has been restructured, he rearranged his financial affairs so that he is no longer to pay the original notes according to their terms. This defense will: (1) increase the expense of litigation, (2) delay the entry of any judgment against the borrower, (3) possibly reduce the amount of any judgment, and (4) possibly result in court imposition of "equitable" repayment terms.

C. Taxpayer Sues

Restructuring reduces the amount of ARLF's claim against a borrower, although it is intended to increase the amount of ARLF's recovery from the borrower. A taxpayer might sue to prevent reductions in claims.

To sue, a taxpayer must have standing. Important considerations in determining whether a taxpayer has a sufficient personal stake in the outcome of such a suit to vest the taxpayer with standing are: (1) whether specific constitutional provisions have been violated, (2) the potential economic impact on the state treasury, and (3) whether there is anyone in a better position to litigate the issue. Hoblit v. Commissioner of Natural Resources, 678 P.2d 1337, 1340-1341 (Alaska 1984).

Here: (1) specific constitutional prohibitions may not be implicated, but specific statutory prohibitions are, (2) the

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maximum potential economic impact on the Agricultural Revolving Loan Fund is to reduce claims by \$21,156,000, 6/ and (3) a potential ARLF borrower is probably in a better position to litigate the issue than a taxpayer. Because the farm loan fund is a revolving fund, the potential ARLF borrower stands to lose more than the taxpayer if the net effect of implementation of the Guidelines is to reduce the fund. Consequently, while a taxpayer may not have standing to challenge the implementation of the Guidelines, a potential ARLF borrower might. A successful challenge could invalidate the Guidelines and void agreements entered into under the Guidelines.

#### VII. CONCLUSION

In our view, DNR, DOA, and the ARLF Board are without authority to adopt or implement the June 25, 1987 Restructuring Guidelines. The legislature may grant this authority to DNR, DOA, or the ARLF Board, but has not yet done so.

BR:cmh

Enclosures

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6/ Balances outstanding on delinquent ARLF loans total approximately \$30,000,000. Eight percent (8%) interest on \$30,000,000 payable over 20 years is \$31,116,000. Interest calculated under the Guidelines on \$30,000,000 payable over 30 years equals \$9,960,000. \$31,116,000 minus \$9,960,000 is \$21,156,000. \$21,156,000 is the maximum potential reduction of claims. However, since roughly half of the applications for restructuring considered to date have been denied, the actual reduction in claims would be less.

ARLF FILES IN THE ATTORNEY GENERALS OFFICE

Alamasu, Inc. *	\$ 731,148.98	Jurgens, *	\$ 16,062.00
Alaska Fur Farms	\$ 236,038.17	Kachelmeier	\$ 47,277.75
AK Golden Nugget Pot. Chip	\$ 363,593.41	Karr, Richard	\$ 180,180.00
Anchor Renewable Farms	\$ 198,111.60	Keaster, Charles *	\$ 235,080.29
Arden Farms	\$ 250,186.00	Kelley, Laura	\$ 23,293.00
Bannon, Jesse and Wesley	\$2,285,175.57	Kilmurray, Brendon	\$ 300,509.58
Bearson, Myron	\$ 430,805.00	Kratzer, Donald	\$ 77,425.36
Beaver, Roy	\$ 128,386.52	Lasley, Jimmy	\$ 308,726.42
Blyth, James	\$ 40,259.22	Mays, Wm. David *	\$ 22,304.00
Bradley,	\$ 29,695.01	Mead	\$ 5,000.00
Brehmer, Gerald *	\$ 655,262.97	Melin	\$ 19,320.00
Brown, Victor	\$ 101,412.84	Melton, Len	\$ 886,096.75
Buck and Kirsch *	\$ 270,177.01	Miller, Terry	\$ 334,780.02
Cange, Charles	\$ 76,921.00	Mitchell, Earl	\$ 459,686.46
Carlson, Charles	\$ 56,085.29	Mulligan, Patrick	\$ 962,274.11
Carlson, Lyle	\$ 113,547.19	Muth and Sons, Inc.	\$ 182,891.88
Crook	\$ 83,452.34	Olson, Arnold	\$ 3,500.00
Crowson	\$ 454,929.65	Olson, Manvil	\$ 533,819.57
Dairy West * (Lee)	\$1,252,305.00	Orcutt Farms	\$ 460,973.35
Delta K	\$ 133,226.78	Peninsula Grnhs	\$ 935,202.50
Ditchen, Carl	\$ 650,150.00	Peterson, Alan	\$ 651,131.83
Eberhardt, Bernard	\$ 86,453.00	Petty, Larry *	\$ 88,564.52
Engellant	\$ 603,559.23	Porter,	\$ 19,034.29
Evans, Dorothy	\$ 3,732.97	Richards, Ronald	\$ 15,000.00
Far North Aplary	\$ 27,912.00	Roberts, Bruce *	\$ 30,290.00
Fett, Lee and Marie	\$ 275,051.00	Rutt, John	\$ 690,396.65
Fielding, Thomas	\$ 93,167.42	Saylor	\$ 333,722.19
Fretwell,	\$ 48,000.00	Schade, Lloyd	\$ 163,078.34
Gentz, Wayne and Patricia	\$ 395,129.37	Schenk, Neil	\$ 504,891.41
Gerstle River Farms	\$ 667,700.00	Schmidt	\$ 239,086.12
Gilliland (Gold n Honey)	\$ 52,996.25	Schweigert	\$ 41,482.18
Golden Valley	\$ 454,002.86	Smith, Evander	\$ 550,198.00
Green, Dennis *	\$ 823,613.61	Smith, Howard	\$ 45,600.00
H & R Farms *	\$1,028,280.52	Snowcrest Farms	\$ 740,742.97
Hartman, Albert	\$ 130,324.49	Spears/OHM	\$ 227,456.00
Heather Farms	\$ 268,771.00	Stromberg, Gary	\$ 30,852.53
Heaton, Richard	\$ 968,464.13	Taggo	\$ 43,914.66
Hendershot, Ed	\$ 211,871.00	Thom, Robert	\$ 553,466.70
Holcomb, Steve *	\$ 252,246.91	Thomas, Alvin	\$ 6,056.00
Ingalls, Gayland	\$ 40,723.33	Vickaryous, James	\$ 7,309.05
Jacobson, Doug & Shirley	\$ 146,118.00	Wassink, Harry	\$ 668,917.63
Jenn, Eugene	\$1,023,465.00	Wener,	\$ 29,812.00
Johnson, Javid *	\$ 14,413.00	Willard, Bruce	\$ 70,718.52
Johnson, Elvin "Bud" *	\$ 939,125.00	Wright, Sande	\$ 985,075.77
Joyce, Mickey	\$ 29,625.97	Zimmerman, Ed	\$ 659,783.44
	17,125,615.61		13,390,983.84

\* Board Action of 4/13/88

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4 9 4

# HOUSE COMMITTEE REPORT

(9)

Date referred: 5/5/88

FURTHER REFERRALS:

576  
Rules

DATE: 5-6-88

The Resources Committee has considered CSSB 494(Fin)

"An Act relating to the salmon enhancement tax and to salmon enhancement authorities; 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 5/3/88
- zero with analysis

**SIGNING DO PASS:**

Adelheid Herrman  
Mike [unclear]  
[unclear]  
Mike [unclear]  
[unclear]  
Dick [unclear]  
Cliff Davidson  
Kenneth Springs  
[unclear]

**SIGNING OTHER RECOMMENDATIONS:**

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Adelheid Herrman  
 CO Chairman's signature

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

# HOUSE COMMITTEE REPORT

(9)

Date referred: 5/5/88

FURTHER REFERRALS:

576  
Rules

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- zero fiscal note  same as previous zero fiscal note published 5/3/88
- zero with analysis

**SIGNING DO PASS:**

**SIGNING OTHER RECOMMENDATIONS:**

Adelheid Herrman  
Mike [unclear]  
[unclear]  
Mike [unclear]  
[unclear]  
Dick [unclear]  
Cliff [unclear]  
Harold [unclear]  
Stan [unclear]

Adelheid Herrman  
 CO Chairman's signature

**JOHN SUND, REPRESENTATIVE**

2504 2nd Avenue  
Ketchikan, Alaska 99901  
(907) 225-5552

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*While in Juneau*  
*P. O. Box V*  
*Juneau, Alaska 99811*  
*(907) 465-4919*

MEMORANDUM

To: House Resources Committee  
Representative Adelheid Herrmann - Cochair  
Representative Sam Cotton - Cochair

From: Representative John Sund

Date: May 5, 1988

Re: Senate bill 494 - "An Act relating to the salmon enhancement tax and to salmon enhancement authorities; and providing for an effective date."

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Senate Bill 494 repeals reference in state statutes to regional salmon enhancement authorities, and exempts the regional aquaculture association special harvest areas from the salmon enhancement tax.

The regional salmon enhancement authority is a concept currently in state statutes that has never been used and is not workable. The regional associations support its removal. The attached letter from the Southern Southeast Regional Aquaculture Association provides background information on this issue.

The special harvest areas are special areas designated by the Board of Fisheries in which the regional associations harvest the surplus salmon returning to their facilities and use the proceeds to cover operating costs. It seems purposeless for the associations to pay a tax on their salmon harvests when the tax will just be returned to them. The Department of Revenue has never collected this tax.

members for the purpose of securing and repaying a loan made under AS 16.10.510.

(b) Upon satisfactory demonstration to the commissioner that an assessment levied under this section may reasonably be relied upon to secure and repay a loan to be made under AS 16.10.510, the commissioner may make the loan.

(c) *[Repealed, § 33 ch 14 SLA 1987.]* (§ 1 ch 190 SLA 1976; am § 9 ch 59 SLA 1979; am § 33 ch 14 SLA 1987)

**Effect of amendments.** — The 1987 amendment at the beginning of subsection (a) substituted "An" for "In place of or in addition to an assessment levied under AS 16.10.530, an," at the end of subsection (b) deleted "without requiring an assessment under AS 16.10.530," and deleted former subsection (c), which read "If an assessment made under this section fails to satisfy the payments required on the principal and interest due on the loan the commissioner may negotiate with the regional association to levy an assessment under AS 16.10.530."

*Sec. 16.10.550. Sale or transfer of mortgages and notes. [Repealed, § 14 ch 122 SLA 1980.]*

**Sec. 16.10.555. Disposal of property acquired by default or foreclosure.** The Department of Commerce and Economic Development shall dispose of property acquired through default or foreclosure of a loan made under AS 16.10.500 — 16.10.620. Disposal shall be made in a manner that serves the best interests of the state, and may include the amortization of payments over a period of years. (§ 13 ch 79 SLA 1985)

**Sec. 16.10.560. Definitions.** In AS 16.10.500 — 16.10.560

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

(2) "hatchery" means a facility for the artificial incubation of salmon eggs which may include means for the rearing of juvenile salmon. (§ 1 ch 190 SLA 1976)

**Cross references.** — For further definitions, see AS 16.05.940.

**Sec. 16.10.600. Creation of authorities.** (a) An association qualified under AS 16.10.380 as a regional association is given the authority to form a regional salmon enhancement authority. There is created with respect to each of the associations qualified under AS 16.10.380 a public body corporate and politic as a political subdivision of the state to function in the operating areas of the individual associations. Each authority may exercise all powers conferred by AS 16.10.600 — 16.10.620.

(b) A regional salmon enhancement authority may not transact business or exercise powers granted to it until the governing body of

the association has, by resolution, declared there is a need for the authority to function, given it the authority to function and appointed persons to serve as the board of commissioners of the authority. The number of members of the board of commissioners, their terms of office and the filling of vacancies in office shall be determined by resolution of the governing body of the association.

(c) The regional salmon enhancement authority has jurisdiction to operate in all or part of the operating area of the individual association as determined by resolution of the governing body of the association. (§ 17 ch 154 SLA 1977)

**Sec. 16.10.610. Tax exemption.** (a) A salmon enhancement authority is exempt from payment of taxes or assessments for a period of 20 years from June 24, 1977 on property owned by the authority which is used for salmon enhancement purposes.

(b) All obligations or liabilities of a regional salmon enhancement authority remain its own and are not obligations or liabilities of the state. (§ 17 ch 154 SLA 1977)

**Sec. 16.10.620. Powers of the authority.** A salmon enhancement authority has the general power to

- (1) adopt, alter and use a corporate seal;
- (2) prescribe, adopt, amend and repeal bylaws;
- (3) sue and be sued in its own name;
- (4) appoint officers, agents and employees and vest them with powers and duties and to fix, change and pay compensation for their services as the authority may determine;
- (5) borrow money, make and issue notes and other evidences of indebtedness of the authority for any of its corporate purposes and to secure payment of its obligations by pledge of or lien on all or any of its assets, contracts, revenue and income;
- (6) make and execute agreements, contracts and other instruments necessary or convenient in the exercise of its powers and functions, including contracts with any person, firm, corporation, government agency or other entity;
- (7) receive, administer and comply with the conditions and requirements of an appropriation, gift, grant or donation of property or money;
- (8) invest or reinvest money or funds held by the authority in obligations or other securities or investments in which banks or trust companies in the state may legally invest funds held in reserves or sinking funds or funds not required for immediate disbursement, and in certificates of deposits or time deposits;
- (9) acquire, hold, use, lease, sell or otherwise dispose of property of any kind, real, personal or mixed or any interest in it;

(10) do all acts and things necessary, convenient or desirable to carry out the powers granted or implied in AS 16.10.600 — 16.10.620;  
 (11) adopt, amend and repeal regulations necessary. (§ 17 ch 154 SLA 1977)

*Secs. 16.10.650 — 16.10.720. Fishermen's mortgage and note program. [Repealed, § 72 ch 113 SLA 1982.]*

**Chapter 15. Fisheries Experimental Laboratory.**

*[Repealed, § 29 ch 132 SLA 1984.]*

**Chapter 20. Conservation and Protection of Alaskan Wildlife.**

**Article**

1. State Game Refuges (§§ 16.20.010 — 16.20.030)
2. Walrus Islands State Game Sanctuary (§§ 16.20.090 — 16.20.140)
3. McNeil River State Game Sanctuary (§§ 16.20.160 — 16.20.170)
4. Endangered Species (§§ 16.20.180 — 16.20.210)
5. State Range Areas (§§ 16.20.300 — 16.20.360)
6. Fish and Game Critical Habitat Areas (§§ 16.20.500 — 16.20.690)

**Article 1. State Game Refuges.**

**Section**

10. Legislative recognition
20. Purpose
30. Refuges established
32. Palmer Hay Flats State Game Refuge
34. Mendenhall Wetlands State Game Refuge
36. Susitna Flats State Game Refuge
38. Trading Bay State Game Refuge

**Section**

39. Creamer's Field Migratory Waterfowl Refuge
40. Regulations
50. Multiple land use
60. Submission of plans and specifications
70. Relationship to other laws
80. Definitions

*Opinions of attorney general. — For a discussion of the authority of the Department of Natural Resources and the Department of Fish and Game, see November 8, 1985 Op. Att'y Gen.*

**Sec. 16.20.010. Legislative recognition.** The legislature recognizes that

- (1) the state has jurisdiction over all fish and game in the state except in those areas where it has assented to federal control;
- (2) the state has not assented to federal control of fish and game in those areas which were set apart as National Bird and Wildlife Refuges while the state was a United States territory;

**SOUTHERN SOUTHEAST REGIONAL  
AQUACULTURE ASSOCIATION, INC.**

1621 Tongass Ave., #103

Ketchikan, Alaska 99901

(907) 225-9605

Representative C.E. Swackhammer  
Alaska State House of Representatives  
P.O. Box 417  
Soldotna, AK 99669

December 17, 1987

Dear Representative Swackhammer:

I recently received a copy of the memorandum to you from legislative analyst, Brad Pierce, dated November 2, 1987 regarding the possibility of an enhancement authority as a long-term funding mechanism for Alaska's ocean ranching program. Are you or do you know of anyone who will propose legislation initiating a statewide salmon enhancement authority during the 1988 legislative session? I am writing to express the opposition of the Southern Southeast Regional Aquaculture Association (SSRAA) to any legislation that proposes a statewide salmon enhancement authority.

SSRAA, along with the other major regional aquaculture associations, jointly developed a position statement in 1987 on the possible transfer of state fish hatcheries to regional associations. This is still the position of SSRAA, and SSRAA strongly encourages the state to operate the FRED salmon hatcheries using general funds of the state. If the state salmon hatcheries are providing an economic benefit to the residents of Alaska beyond the cost of operating them, then the state should continue to operate the facilities. If, however, it is the view of the legislature that it is not in the state's best interest to continue the operation of the FRED hatcheries, but if the hatcheries provides a positive economic benefit to commercial fishermen, then the option of having the regional aquaculture associations operate the state hatcheries should be continued.

According to sec. 16.10.600 of the Alaska Statutes and Regulations for private nonprofit salmon hatcheries, a qualified regional aquaculture association is given the authority to form a regional salmon enhancement authority. There is no mention of a statewide enhancement authority and the original legislative

**PRIVATE NON PROFIT HATCHERIES**

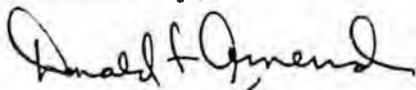
intent did not include state FRED hatcheries. It does not appear appropriate for the FRED Division or legislature to pursue the formation of an enhancement authority to encompass both the PNP programs and the state FRED programs.

It is SSRAA's opinion that a statewide authority would not work and would not be in the best interest of commercial fishermen. The primary objection would be the loss of regional control which is one of the reasons for the success of the regional associations. In addition, it would cost the fishermen more either through increased taxes or fees and they could receive less benefit depending on where the funds were spent. Furthermore, it would create another bureaucracy with all the associated inefficiencies. One of the primary reasons for the success of the regional associations has been the motivation of a private corporation and the effort of fishermen within the region. The more the fishermen are removed from the critical decisions which affect them, and the more the operational staff is restricted from trying innovative techniques, the greater will be the chance of failure, stagnation, and lack of cooperation.

Why put the successful programs of the regional associations at risk? Efforts should be pursued by the legislature to find alternative funding for the FRED facilities without increasing the tax burden on the commercial fishermen. They are already paying their fair share compared to other industries in Alaska through their permit fees, raw fish tax, vessel fuel tax, landing tax, and enhancement tax. If funds are not available from the general fund, if the FRED hatcheries can not be operated cost effectively, and if there is no benefit to the commercial fishermen through the transfer to the regional associations, then the best alternative is to shut them down.

SSRAA is encouraging all of the regional aquaculture associations and commercial fishing organizations to oppose any legislation which would create a statewide salmon enhancement authority.

Sincerely,



Donald F. Amend  
General Manager

cc: NSRAA	SE Alaska Seine Boat Owners and Operators
CIAA	Ketchikan Fishermen's Association's
PWSAA	Southeast Fish and Game Advisory Committees
KIAA	Representative John Sund
UFA	Representative Robin Taylor
ATA	Representative Peter Goll
USAG	Senator Lloyd Jones
Brian Ailee, FRED Director	

Revisor's notes. — Formerly AS 16.43.285. Renumbered in 1983.

**Article 6. Special Harvest Area Entry Permits.**

<p><b>Section</b>                  400. Special harvest area entry permits                  410. Terms and conditions of special harvest area entry permits</p>	<p><b>Section</b>                  420. Disposition of fish                  430. Authorized gear                  440. Adoption of regulations</p>
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**Sec. 16.43.400. Special harvest area entry permits.** (a) In addition to entry permits, interim-use permits, and educational permits, the commission may issue special harvest area entry permits to holders of private, nonprofit hatchery permits issued by the Department of Fish and Game under AS 16.10.400 — 16.10.475.

(b) The commission may issue special harvest area entry permits notwithstanding the establishment of maximum or optimum numbers under AS 16.43.240 and 16.43.290. (§ 1 ch 64 SLA 1979)

Revisor's notes. — Formerly AS 16.43.335. Renumbered in 1983.

**Sec. 16.43.410. Terms and conditions of special harvest area entry permits.** (a) Special harvest area entry permits may be applied for on an annual basis and shall be issued for a term of one year. A permit is nontransferable.

(b) A special harvest area entry permit may only be issued for the applicable area designated by the Department of Fish and Game as a special harvest area.

(c) The annual fee for a special harvest area entry permit shall be specified by commission regulation under the authority of AS 16.43.160. (§ 2 ch 64 SLA 1979)

Revisor's notes. — Formerly AS 16.43.337. Renumbered in 1983.

**Sec. 16.43.420. Disposition of fish.** Fish caught under the authority of a special harvest area entry permit are the property of the permit holder. The permit holder may sell the fish if the proceeds are used in the manner described in AS 16.10.450. (§ 2 ch 64 SLA 1979)

Revisor's notes. — Formerly AS 16.43.339. Renumbered in 1983.

**Sec. 16.43.430. Authorized gear.** For the purposes of harvesting salmon, a special harvest area entry permit holder may employ any fishing gear designated as legal gear in the applicable special harvest area by the Board of Fisheries. (§ 2 ch 64 SLA 1979)

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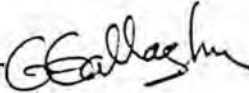
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**MEMORANDUM**  
Department of Natural Resources  
Commissioner's Office

**STATE OF ALASKA**

To: Rep. Sam Cotten

date: 5/7/88

From: Gerald Gallagher   
Director; Division of Mining

subject: Coal Royalty  
Relief

You requested information regarding DNR's current authority to lower coal royalties. I have attached copies of the applicable statutes (A.S. 38.05.150(d)) and regulation (11 AAC 82.665).

As you can see, the Commissioner of DNR has broad discretion to reduce, suspend, waive or refund royalties under A.S. 38.05.150(d), subject to two criteria:

1. If such a reduction is necessary to promote development, or
2. If the lease cannot be successfully operated under its terms.

If a lessee can factually demonstrate either that they cannot operate at a reasonable profit under existing royalty rates, *or* that a royalty reduction rate will lead to increased production, the Commissioner has authority to adjust the royalty rate.

The regulation requires detailed reports and accounting of costs and expenses, as well as a public hearing. The Department's administration of this process requires a lease-specific showing of need for such a reduction and adequate evidence to support such a showing. The burden of providing both the showing of need and the supporting evidence is the applicant's.

This process allows the state to reduce its royalty share in those specific instances where it is demonstrated that development will actually result from such relief.

I am available to discuss this issue at your request.

(c) A person may not take or hold at one time phosphate leases on state land exceeding in the aggregate 10,240 acres. A person may not take or hold sodium leases or permits during the life of sodium leases on state land exceeding in the aggregate acreage 5,120 acres, except that the commissioner may, where it is necessary in order to secure the economic mining of sodium compounds, permit a person to take or hold sodium leases or permits for up to 15,360 acres. A person may not take or hold at any one time oil or gas leases exceeding in the aggregate 500,000 acres granted on tide and submerged land and 500,000 acres on all land other than tide and submerged land, including leases held both as lessee and under option or operating agreement from others. Where more than a single person holds an interest in an oil or gas lease, each person shall be charged only with that percentage of the total acreage which corresponds to its percentage share of the total beneficial interest in the lease.

(d) The commissioner, for the purpose of encouraging the greatest ultimate recovery of coal, oil shale, phosphate, sodium, potassium, sulphur, and geothermal resources and in the interest of conservation of natural resources, after public hearing, or, when the state's title to land beneath navigable waters has been legally challenged by the United States and litigation initiated, may waive, suspend, refund, or reduce the rental, or minimum royalty, or reduce the royalty on an entire leasehold, or on any tract or portion of a leasehold segregated for royalty purposes, whenever the commissioner determines that it is necessary to do so in order to promote development, or that the lease cannot be successfully operated under its terms. If the commissioner, in the interest of conservation, directs or assents to the suspension of operations and production under a lease granted, the payment of acreage rental or of minimum royalty prescribed by the lease may be suspended during the period of suspension of operations and production. The term of the lease shall be extended by adding the period of suspension to the lease.

(e) The provisions of (d) of this section that apply to waiver, suspension, refund or reduction of rental of minimum royalty apply to rental or minimum royalty paid before or after June 19, 1970 on any lease covering land beneath navigable waters which, according to the records of the division of lands, is in effect on June 19, 1970.

(f) The submerged and shoreland lying north of 57° 30 minutes north latitude and east of 159° 49 minutes west longitude within the Bristol Bay drainage are designated as the Bristol Bay Fisheries Reserve. Within the Bristol Bay Fisheries Reserve no surface entry permit to develop an oil or gas lease may be issued on state owned or controlled land until the legislature by appropriate resolution specifically finds that the entry will not constitute danger to the fishery. (§ 2 art VIII ch 169 SLA 1959; am § 1 ch 68 SLA 1969; am §§ 1, 2 ch 208 SLA 1970; am §§ 3, 4 ch 71 SLA 1971; am § 1 ch 102 SLA 1972; am §§ 3, 5 ch 155 SLA 1978)

Sec. 38.05.145. Leasing procedure. (a) Deposits of coal, phosphates, oil shale, sodium, potassium, oil, gas, geothermal resources and state land containing these deposits are subject to disposition under regulations, recommended by the director and adopted by the commissioner, and the provisions of AS 38.05.145 — 38.05.151. In applying the acreage limitations the commissioner may apply the rule of approximation. The uses of the rule of approximation made before March 31, 1960, by the commissioner are ratified.

(b) *(Repealed, § 6 ch 155 SLA 1978.)* (§ 3 art VIII ch 169 SLA 1959; am § 16 ch 61 SLA 1960; am § 3 ch 30 SLA 1964; am §§ 5, 6 ch 71 SLA 1971; am § 33 ch 71 SLA 1972; am § 6 ch 155 SLA 1978)

applies. When locating the unsurveyed remainder of a section of land, a projection of the section lines from the surveyed portion as monumented under the public rectangular system to the first protracted section corner position determines the remainder of the surveyed section. If the first protracted section corner position can be closed into by the public land rectangular survey system within the accuracies and standards established by the Bureau of Land Management's 1947 Manual of Surveying Instructions and in accordance with the department's survey requirements, the protracted corner becomes a common corner for description purposes. Otherwise the surveyed section of land is closed into the protracted section line position as defined by protracted data.

(b) The boundaries of leases issued before July 22, 1979 will be controlled by this section upon approval of the commissioner with the consent of the lessees of record. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020  
AS 38.05.035  
AS 38.05.145(a)

**11 AAC 82.655. RULE OF APPROXIMATION.** The "rule of approximation" as defined in AS 38.05.365 shall be used in determining if a lease or permit complies with the area requirements of AS 38.05. (Eff. 9/5/74, Reg. 51)

Authority: AS 38.05.020  
AS 38.05.145(a)

**11 AAC 82.660. EXCESS AREA; PARTIAL TERMINATION.** If for any reason a permit or lease covers more acreage than the maximum permitted by AS 38.05 or the regulations to be included in one lease or permit of its kind, the lease or permit is not void, but the acreage covered must be reduced to the permitted maximum. Whenever the commissioner determines that a lease exceeds the permitted acreage, he will promptly mail notice to the lessee or permittee, stating the amount of acreage that must be eliminated. Within 60 days after the receipt of the notice, the lessee or permittee of record may file an instrument surrendering or assigning in full at least the amount of acreage that must be eliminated which must be one or more legal subdivisions or in such other shape or shapes as the commissioner approves. The surrender or assignment is effective when filed. If the

surrender or assignment is not filed within 60 days, the commissioner will eliminate the minimum necessary and promptly mail notice to the lessee or permittee, specifying the parcels eliminated. (Eff. 9/5/74, Reg. 51; am 7/22/79, Reg. 71)

Authority: AS 38.05.020  
AS 38.05.145(a)

**11 AAC 82.665. RENTAL AND ROYALTY RELIEF.** (a) Application for relief under AS 38.05.140 must comply with 11 AAC 88.105 and

(1) state all the facts entitling the applicant to relief;

(2) state location and status of all past and present activities on the lease;

(3) include a detailed report of all production during the six months preceding the filing of the application;

(4) contain a detailed statement covering the entire life of the lease showing all expenses and costs of operating the lease including all royalties and overriding royalties and all income from all produced minerals from the lease; and

(5) include an agreement by the applicant to defray the cost of publishing a notice as provided in (b) of this section.

(b) Upon receipt of an application complying with (a) of this section, the commissioner will cause to be published a notice of public hearing if required on the application. The notice must

(1) state the time and place of hearing;

(2) describe the lands involved; and

(3) state the name of the applicant and the nature of the relief applied for.

(c) The notice must be published at least once a week for at least two consecutive weeks in advance of the hearing date, which must be at least 15 days after the last date of publication, in at least one newspaper of general circulation in the vicinity of the principal office of the department, and must be posted at that office for the same period.

(d) At the time and place specified in the published notice, the commissioner will hear evidence offered by the applicant and any other interested party.



# Alaska Environmental Lobby, Inc.

P.O. Box 22151 Juneau, Alaska 99802

907-586-2345

## SB 510 Coal Royalty Rates

Usibelli Coal is currently seeking relief from its royalty payment schedule, "to protect its market share and for promotion and development." The State owns this coal and the Department of Natural Resources, as a public steward, has a responsibility to assure that the people of Alaska are compensated for the removal of this resource.

The concept of a severance tax is to pay for taking non-renewable resources, such as coal. Alaska collects no severance tax on coal, but instead receives a percentage of a company's sales of that coal once the company has removed it from the ground. All other coal producing states collect severance taxes. In addition, Wyoming collects a royalty of 12.5% of the selling price; Montana collects 12.5% of gross value; New Mexico collects 12.5% of the adjusted gross value (AGV).

Our existing royalty schedule was adopted in 1982 after much study and public debate. Despite the fact that it was adopted under different world energy projections and assumptions, it was nonetheless set after extensive studies. Usibelli has known for five years that its royalty rate would be increasing this year. Upon the implementation of the pre-determined rate, Usibelli appealed to the Commissioner of DNR for relief. After review, the Commissioner issued a written ruling on April 8, 1988, that adjusted the schedule, phasing in the increase over a three year period.

SB 510 was introduced within the last three weeks of this session and has received a minimum of public scrutiny. Public policy problems with SB 510 include:

\* Allowing industry to write public policy is a dangerous precedent. The criteria being suggested to grant this relief appears to be what is good for Usibelli. The coal industry seldom hesitates to mention job loss when discussing any royalty or tax increases. What about the jobs and services lost because the state is not paid for its coal - the firehouses closed, the school books not available, the enforcement programs not funded?

\* The public needs to be consulted on how to proceed since it is a public resource. Responding to Usibelli's relief-seeking measures at the last minute allows for very little public testimony and no comprehensive study by the department to justify any numbers.

\* Establishing a four year term for the one-and-a-half percent royalty benefits only one company, Usibelli. There are over 50 coal leases in the state. At least two other companies hope to be in production in the early 1990's, but the time limitation will expire before they can reap any benefits from this proposal.

\* This does not provide stability for the industry. Knowing that an increase could happen after four years, but not knowing what it will be does not allow the industry to plan for organized growth. A one-year relief schedule while the state studies and recommends appropriate royalties is a workable compromise.

Our focus must remain what is best for all the people of Alaska who own this coal. The Commissioner of DNR has acted responsibly. The public must participate in decisions regarding the selling of Alaska's resources.

ALASKA CENTER FOR THE ENVIRONMENT • ALASKA CHAPTER, SIERRA CLUB • JUNEAU GROUP, SIERRA CLUB • SITKA GROUP, SIERRA CLUB  
KNIK GROUP, SIERRA CLUB • DENALI GROUP, SIERRA CLUB • ANCHORAGE AUDUBON SOCIETY • ARCTIC AUDUBON SOCIETY  
DENALI CITIZENS' COUNCIL • ALASKA FRIENDS OF THE EARTH • JUNEAU AUDUBON SOCIETY • KACHEMAK BAY CONSERVATION SOCIETY  
KENAI PENINSULA AUDUBON SOCIETY • KODIAK AUDUBON SOCIETY • LYNN CANAL CONSERVATION • ALASKA WILDLIFE ALLIANCE  
SITKA CONSERVATION SOCIETY • NORTHERN ALASKA ENVIRONMENTAL CENTER • SOUTHEAST ALASKA CONSERVATION COUNCIL  
KNIK KANOERS AND KAYAKERS

than 200 people from Japan, Nepal and China, is the largest assault ever on Everest. One member of the Japanese team, Hidetaka Mizukoshi, died of heart failure during the climb.

Climbing began last month to celebrate the 35th anniversary of the first Everest conquest by New Zealander Sir Edmund Hillary and Sherpa guide Tenzing Norgay. More than 192 people have since scaled the 29,028-foot mountain, with 13 climbing successfully more than once.

In this climb, however, members of two teams met at the summit after climbing simultaneously from the mountain's north face in China and the south face in Nepal, the first such rendezvous in history.

"This is the greatest event in the history of climbing," said Kunga Sherpa, leader of one of the Nepalese base camp setups.

On the summit, a cameraman asked one of the Japanese climbers how he felt, and he gaspingly replied: "I feel great!"

last year.

# Why do Koreans get break on Usibelli coal?

By KATHI BERRY  
Staff Writer

Koreans paid about \$13 less per ton of Alaska coal than Alaskans did in 1987, according to calculations based on sales of Usibelli Coal Mine Inc. last year.

A ton of coal at the Healy mine cost Alaskans about \$30 in 1987, while that same ton of coal sold for about \$17, or about 45 percent less, in the international market, the figures show.

The question of how much Usibelli charges for coal, and how much the coal mine should pay in

royalties to the state, has been a topic of debate as the state Legislature nears adjournment in Juneau.

Usibelli is the sole supplier of coal in Alaska.

Some say fierce competition forces Usibelli to sell at rock-bottom prices to compete in the international market. Others say the company charges higher prices in Fairbanks simply because the market will allow it.

"Charging those prices may be the only way Usibelli can stay in business and keep Fairbanks supplied in coal," said Pat O'Brien,

head of the economics department at the University of Alaska Fairbanks.

Usibelli officials would not disclose company prices. Those listed here were calculated following interviews with financial experts associated with the utilities and power producers to which Usibelli sells coal. The international prices were confirmed by officials with Sunco Alaska Corp., the company that buys coal from Usibelli, then sells it to Korean firms.

Joe Usibelli Sr., the mine's chief  
(See USIBELLI, Back Page)

## UAF graduating class largest ever

The University of Alaska Fairbanks will graduate the largest class in its history Sunday in the 66th annual Commencement Ceremonies.

Including the new School of Career and Continuing Education, formerly Tanana Valley Community College, more than 700 degrees will be awarded. Last year 590 were awarded.

UAF officials expect to grant 14 doctorates, three educational specialist degrees, 134 master's degrees and 435 bachelor's degrees.

In addition, it plans to award 68 associate of applied sciences degrees, 28 associate of arts degrees and 32 certificates.

This year's graduates will receive their diplomas Sunday in Patty Center. Commencement begins at 2 p.m. with the procession of the faculty and graduating students.

About 400 graduates are expected to participate in the Fairbanks commencement. Students at branch campuses in Nome, Kotzebue and Bethel will be recognized

(See UAF, Back Page)



RONALD GRAHAM  
Commencement speaker

## Fairbanks firm wins contract

News-Miner Bureau  
WASHINGTON—The U.S. Army Corps of Engineers today awarded a \$3.3-million contract to a Fairbanks firm to build a new dining facility at Fort Wainwright.

The contract for the 14,000-square foot dining hall was awarded to Glemm Company Inc.

Harvey Marlin, vice president, said the company hopes to complete construction by next spring, ahead of schedule.

The dining hall is needed to accommodate additional troops that are being assigned to the post with the Sixth Light Infantry Division.



BANK FIRE—A helicopter interstate building windows of the 62-story building downtown Los Angeles.

## Explosions in Louisiana

NORCO, La. (AP)—An explosion and fire ripped through Shell Oil Co. refinery today leaving one person dead, 33 injured and five missing, and forcing 2,800 residents to evacuate officials said.

The blast was so powerful it broke windows and set off burglar alarms 20 miles away, and Shell spokeswoman Sarah Coletti said both plant workers and nei

13,000 expected to help with Cleanup Day

## Royalty payment rise could end Usibelli's foreign sales

By KATHI BERRY  
Staff Writer

A state regulation that would increase royalty payments on coal by nearly \$1 per ton could force Usibelli Coal Mine Inc. out of business in the international market, some state legislators say.

That's the main reason the Senate unanimously passed a bill Tuesday that would reduce royalty payments to about 30 cents per ton for the next four years, and why many think the bill will pass in the House.

"We are just hanging on in the international market now," said Sen. Rettye Fahrenkamp, D-Fairbanks, who introduced the legislation April 19. "Why do something that will rack the boat and push us out of the market completely?"

Alaska coal is at risk because it is of much lower quality than other coal on the international market, but sells for about the same price per ton, Fahrenkamp said.

Usibelli, Alaska's sole supplier of coal, exported more than 800,000 tons of coal to firms in Korea and Taiwan last year. That coal contained about 25 percent water and less burnable material than other coal on the international market, Fahrenkamp said.

"That means if you see four ships of Alaska coal pass by, the fourth

one would be worth no more than a boat full of water," Fahrenkamp said.

Alaska competes against China, the Soviet Union, Canada, South Africa and Australia in an international market in which the demand for coal has diminished in recent years, largely because of dropping oil prices.

Koreans are willing to pay for Alaska's low quality coal only to honor a political "gentlemen's agreement," according to Bill Noll, vice president of Suncel Alaska Corp., the company that buys coal from Usibelli to sell internationally.

"There is a tremendous amount of political pressure on Asia to buy U.S. exports," Noll said. "For that reason alone, they are willing to bite the bullet and pay more for Alaska coal, even if it means it's a bit of a money loser."

A long list of influential Alaskans worked for years to put the Korean contract together. For that reason, any rise in the international price of Alaska coal now will insult the Koreans, Noll said.

"Dumping the price up at all will push the situation to the brink," Noll said. "It would be like slapping a trusted friend in the face."

Suncel Alaska upheld its end of the agreement when it invested \$17

million in a new shipping terminal in Seward four years ago. At that time, the price of oil was high and the demand for coal great, Noll said.

Today, Suncel must continue to buy Alaska coal to pay off its investment loans, Noll said.

"We are stuck, but that doesn't mean we'll accept any deal that comes along," Noll said. "If a royalty tax comes into place at an unacceptable level, and if it's passed through to us as a company, then we will at our earliest opportunity get out of that contract."

The Fahrenkamp bill requires Usibelli to pay royalty taxes at 1.5 percent of the adjusted gross value of coal, or about 30 cents per ton. A state regulation requires Usibelli to pay 5 percent of that value, or about \$1 per ton. Both taxes are up from the 7.5 cents per ton paid by Usibelli during the past several years.

Suncel officials say they'll protest any move to pass on those increased royalty costs to their company.

"The thrust of it is this, if you guys (at Usibelli) want to get more pennies now, fine. But remember that if you do, we'll pick up our marbles and move on as soon as we possibly can," he said.

Only one other coal mine in Alaska has the potential to start produc-

ing in the near future, Gallagher said. That operation, known as the Washbone Hill project in Southcentral Alaska, could begin within five years.

Usibelli officials will not say if the mine plans to absorb the costs incurred through increased royalties. However, the company's financial statements in recent years seem to indicate that Usibelli can do so, at least in the short run, said Bob Logan, an assistant economics professor at the University of Alaska Fairbanks.

Such financial statements have not been available to the legislators, who are trying to figure out what would be a fair price to charge Usibelli.

Usibelli operates on state land and the company pays the state an annual lease fee of about \$50,000. The mining company also pays an annual mining license tax of about \$200,000 and a corporate income tax of an unknown amount, said Jerry Gallagher, director of the state's Division of Mining.

"One of my duties is to make sure the state gets a fair return for our renewable resources," Gallagher said. "What that is has not been answered. All we have to go on is a coal producer telling us what he is willing to pay."

No one wants to charge so much that Usibelli is forced out of the international market, Gallagher said.

After Usibelli expanded into that market three years ago, the increase created about 40 new jobs at the Usibelli mine, about 10 new jobs with the Alaska Railroad and about 15 at the Suncel terminal.

The business also diversifies the economy, creates more business for the Alaska Railroad and opens an international market that other Alaska coal companies may eventually get into, Noll said.

The higher output also lowers the price of coal in Fairbanks by about \$1 per ton, according to Robert Hansen, company manager of finance and administrative services for GVEA.

If current royalty regulations remain in effect, the state would earn \$671,750 annually from Usibelli. If the proposed royalty bill passes, the state would get about \$390,000 in royalties. Both sums can be obtained only if Usibelli keeps its export market, however.

Noll says a higher royalty tax may one day be appropriate. "We are not saying never," Noll said. "We are saying not now. Not yet."

## USIBELLI

(Continued from page 1)

executive officer, was reluctant to discuss the marketing strategy behind the mine's price structure.

"I don't want to say why the charge is less to Korea than it is to Fairbanks," he said. "All we will get is a black eye out of it and no body will understand."

State officials say Usibelli sold more than 1.5 million tons of coal in 1987. A little more than half of its production, about 800,000 tons, went to companies in Korea and Taiwan.

The rest was sold to Golden Valley Electric Association, Fairbanks Municipal Utilities System, University of Alaska Fairbanks, and to the military at Ft. Wainwright, Clear and Eielson. Small amounts were purchased by Reliable Coal in Healy, which sells to the Coal Bunker in Fairbanks.

By the time a ton of coal is transported to Korea, it costs about \$36. The same ton hauled by train to Fairbanks costs about \$41.

This means it costs about 3 cents per mile to transport a ton of coal 4,500 miles to Korea, while it costs about 8 cents per mile to ship the same amount of coal 122 miles to Fairbanks.

Suncel officials say they get a discount for contracting with the Alaska Railroad to haul the coal to Seward. Also, strong competition forces shipping companies to offer low rates.

Even so, figures such as these make some wonder whether high prices in Fairbanks are subsidizing Usibelli's international market.

"It seems like a reasonable assumption," said Jerry Gallagher, director of the state Division of Mining in Anchorage. "In the sense that charging higher prices here probably makes it possible for them to charge lower prices abroad."

Gallagher says Fairbanks is a "captive market" for coal manufacturers. "Fairbanksans are at the mercy of the only coal company and the only railroad in the state," he said.

City Mayor Bill Walley agrees. "The high rate that we have paid Usibelli in the last two years is a direct result of having to deal with a monopoly source of energy," Walley wrote in an April 2 letter to city council members.

John Sims, Usibelli vice president, said Koreans get a lower

price mainly because they agreed to buy large quantities of coal annually. The Koreans also get a discount for signing a 15 year contract that can be renegotiated annually and for "coming up with loans and guarantees which gave us protection," Sims said.

"If any of our customers, if MUS wanted to contract for the same amount of coal under the same terms as the Koreans, the price would be equitable," Sims said. "Similarly, if a consumer doesn't like long term contracts and doesn't want to plan ahead, then our price goes up. It's a simple fact of life. It's not unique to the way Usibelli does business."

In the Fairbanks market, Usibelli has less competition than in the international market, so the company has more flexibility to charge what it wants, O'Brien said.

"However, they can't charge a price so high that it will encourage local companies to switch to oil or natural gas," he said. "And they do have to make sure that coal costs less than it would for an out of state company to get a ton of coal to Fairbanks."

Usibelli's price is about \$3, or 20 percent, higher than the price of an average ton of coal delivered to an electrical utility plant elsewhere in the country, according to figures from the federal Energy Information Administration.

"A person just looking at these figures would say, hey, Usibelli is gouging the Alaskan and giving a basement price to Koreans," said Bob Logan, assistant professor of economics at the University of Alaska Fairbanks. "The problem is that Usibelli is running a business and so they'll charge what they can to maximize their profits. That doesn't make them evil."

Usibelli probably has higher costs than elsewhere in the nation because its equipment is more expensive and its coals is dug from frozen ground, Logan said.

No one knows how much Usibelli could reduce its prices in the domestic market and still remain in business, said Bill Noll, vice president of Suncel Alaska.

"As of right now, that is untested," Noll said. "It's like a guy who hasn't lifted 100-pound-male for years because he's had no reason to do so. Our best safeguard is competition. It keeps us all honest and flexible."

## Price varies even in Fairbanks

By KATHI BERRY  
Staff Writer

The coal is the same, but the price per ton varies when it's purchased by customers in Fairbanks.

Local utilities, the University of Alaska and the military spend between \$21 and \$33 for a ton of coal before it leaves the Usibelli Coal Mine in Healy. The reason for the variety in price is simple, according to John Sims, company vice president.

"We sell it cheaper to companies that promise to buy large quantities over a long period of time," he said.

Golden Valley Electric Association, a rural electric cooperative, bought 141,358 tons for \$21.04 per ton in 1987. The Fairbanks Municipal

agree only to short-term contracts, Sims said.

GVEA also gets a discount because it owns a coal-generation plant in Healy. That means Usibelli does not have to charge an extra \$2 per ton for crushing and loading at the mine. It saves another \$1 because Usibelli doesn't have to contend with shipping schedules, Sims said.

Finally, GVEA's contract contains several clauses that benefit Usibelli and the contract has been extended since the early 1970s, when prices for coal were lower, Sims said.

"All of our contracts, whether buying one or 100,000 tons, fit into a complex matrix of agreements which depend on about 15 factors," Sims said. "Those include provisions that make companies pay for

guarantee, Sims said.

City Mayor Bill Walley recently vetoed a 10-year contract with Usibelli that would have reduced the annual cost per ton by at least \$5. The city council sustained the veto.

Walley fears that signing a long-term contract with the mine would reduce the city's chances of finding cheaper energy alternatives in the future, most notably, a natural gas pipeline proposed from Wasilla to Fairbanks.

"I don't know what to say about that other than it will probably be a long time before that pipeline comes on line," Sims said. "Meanwhile, the higher contract price is being passed on to Fairbanks consumers."

In April, the city's Public Utilities Board recommended that the

The following chart shows approximate amounts of coal that customers purchased from Usibelli Coal Mine, Inc. during calendar year 1987.

### NATIONAL SALES FROM USIBELLI FOR CALENDAR YEAR 1987

Tons purchased	Total spent on coal	Avg. cost per ton	Avg. cost per ton
		(per ton)	(per ton)
GVEA	141,358 tons*	\$2,974,172.30	\$21.04
MUS	127,533 tons	\$4,231,544.90	\$33.18
UAF	52,128 tons*	\$1,644,638.40	\$31.55
Reliable Coal	10,000 tons	\$270,000.00	\$27.00
Eielson	144,971 tons	\$4,615,876.60	\$31.84
Fl. WW	143,275 tons	\$4,593,716.00	\$31.84
Clear	82,601 tons	\$2,630,015.80	\$31.84
Total			
Military	371,847 tons	\$11,839,608.00	\$31.81
OVERALL TOTALS	702,066 tons	\$20,959,063.00	\$29.82

### INTERNATIONAL SALES FROM USIBELLI FOR CALENDAR YEAR 1987

Suncel Electric Power	844,708 tons*		
	23,900 tons*		

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"We sell it cheaper to companies that promise to buy large quantities over a long period of time," he said.

Golden Valley Electric Association, a rural electric cooperative, bought 141,350 tons for \$21.04 per ton in 1987. The Fairbanks Municipal Utilities System, the University of Alaska Fairbanks and military bases on Ft. Wainwright, Clear and Eielson spent about \$10 more for similar amounts.

GVEA gets a better price because it agreed to what amounts to a 15-year contract, while MUS and several of the military bases will

agree only to short term contracts, Sims said.

GVEA also gets a discount because it owns a coal generation plant in Healy. That means Usibelli does not have to charge an extra \$2 per ton for crushing and loading at the mine. It saves another \$1 because Usibelli doesn't have to contend with shipping schedules, Sims said.

Finally, GVEA's contract contains several clauses that benefit Usibelli and the contract has been extended since the early 1970s, when prices for coal were lower, Sims said.

"All of our contracts, whether buying one or 100,000 tons, fit into a complex matrix of agreements which depend on about 15 factors," Sims said. "Those include provisions that make companies pay for a certain amount annually, advance payments, scheduling for transport, sampling procedures, guaranteed heat value and more."

MUS pays more than any other customer in Fairbanks because it will agree only to an annual contract, with few provisions of

guarantee, Sims said.

City Mayor Bill Walley recently vetoed a 10-year contract with Usibelli that would have reduced the annual cost per ton by at least \$5. The city council sustained the veto.

Walley fears that signing a long-term contract with the mine would reduce the city's chances of finding cheaper energy alternatives in the future, most notably, a natural gas pipeline proposed from Wasilla to Fairbanks.

"I don't know what to say about that other than it will probably be a long time before that pipeline comes on line," Sims said. "Meanwhile, the higher contract price is being passed on to Fairbanks consumers."

In April, the city's Public Utilities Board recommended that the city sign a five-year contract with Usibelli in which MUS would pay \$31.37 for 121,000 tons per year, according to Cathy Devlin, MUS budget director.

The city council is expected to vote on the proposal Monday. If it passes, it will need Walley's approval.

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Total			
Military	371,847 tons	\$11,839,608.00	\$31.84
OVERALL TOTALS	702,868 tons	\$20,959,963.00	\$29.82

INTERNATIONAL SALES FROM USIBELLI FOR CALENDAR YEAR 1987			
Suncel Electric Power	644,708 tons*		
Taiwan Power	23,990 tons*		
TOTALS	800,677 tons	\$14,640,937.00	\$17.53

OVERALL NATIONAL AND INTERNATIONAL SALES			
TOTALS	1,503,543 tons	\$35,000,000.00	\$23.28

All prices listed were garnered from the financial compilations of the individual companies. Ton estimates were supplied by the companies. Numbers with the asterisk (\*) were supplied by the state. International numbers were calculated based on estimates from Usibelli Coal Mine, Inc. and Suncel Alaska Corporation.

These are the figures charged per ton of coal on the Alaska Railroad from Healy to different destinations.

Healy to	Rail miles	Cost per ton	Cost per ton mile
Healy to Fairbanks	112	\$8.19	.073
Healy to Ft. VWV	116	\$9.33	.080
Healy to Clear	65	\$4.70	.071
Healy to Eielson	140	\$16.49	.075
Healy to Seward	353	\$9.95	.028

The figures come from the Alaska Railroad and Suncel Alaska Corporation.

Even so, figures such as these make some wonder whether high prices in Fairbanks are subsidizing Usibelli's international market.

"It seems like a reasonable assumption," said Jerry Gallagher, director of the state Division of Mining in Anchorage. "In the sense that charging higher prices here probably makes it possible for them to charge lower prices abroad."

Gallagher says Fairbanks is a "reactive market" for coal manufacturers. "Fairbanksans are at the mercy of the only coal company and the only railroad in the state," he said.

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"As of right now, that is untested," Noll said. "It's like a guy who hasn't lifted 100 pounds in a few years because he's had no reason to do so. Our best safeguard is competition. It keeps us all loose and flexing."

## 10 worst little locations

Though it will probably have as much appeal as Mr. Black's annual list of the 10 worst dressed people in America, Glenn Hackney, the "Litter Laureate" of this year's Fairbanks litter cleanup campaign, has issued a special list for the occasion.

Hackney's Hit Parade of the Most Littered Places in Fairbanks—1988, "is just that, a list of the places most needing cleanup May 14, the community's official Cleanup Day this year. Sharpen the dubious distinction of making the list are the following locations:

- The Parks Highway, going west just past the bridge over the Chena River. "More than half a mile of running eyesores," reads the list.
- Geist Road on the right going east about a quarter mile from the Parks Highway.
- On the Richardson Highway, to the right of the first painted construction barrel going south from Airport Way. "Observe a large cardboard box, obvious escapee from an uncovered load from a truck," is the list comment.
- The Steese Highway going ab

out a quarter-mile south from Farmers Loop.

• In the median strip about a quarter-mile farther along the Steese. "Another whacking great cardboard box," noted the Litter Laureate.

• Plastic debris going south on Peger Road, in front of Northland Dairy.

• The Airport Way access road at Wibur Street, on the bus stop side.

• The bike path just past Pay 'N Pak on Airport Way going east.

• Nearly any intersection on Airport Way between Cwles and Market streets, going either east or west. Among the debris are "Alaska tumbleweeds," also known as plastic grocery bags.

• The area behind the old sewage treatment, at plant across from the new Community Center construction site.

"I've been doing this (participating in Cleanup Day) for about 20 years up here now," Hackney said. "I just like to see a clean community." He said Cleanup Day is the biggest community event in Fairbanks.

# Gruenstein to visit here Friday

Peter Gruenstein, who's campaigning for Congress, is scheduled to be in Fairbanks Friday for a variety of public appearances.

The Anchorage Democrat is seeking his party's nomination to challenge Republican Rep. Don Young for Alaska's lone seat in the U.S. House of Representatives. His schedule:

8 a.m.—Gruenstein meets with members of the Fairbanks Young Democrats at the Fairbanks Bakery, 3500 College Road.

10 a.m.—KFAR Radio Problem Corner appearance.

1:30 p.m.—Appearance at Earth's North Press Club meeting, Wendy's, 1857 Airport Way.

7 p.m.—David and Rachel Hopkins host a neighborhood meeting for Gruenstein in their home at 40 Steelhead Rd., off Chena Pump Road.

## Short Takes

### Standard cuts price of North Slope oil

Standard Alaska Production Co. announced today it has reduced the price of North Slope crude oil by 42 cents a barrel and is adopting a new contract pricing method that will help eliminate some of the guess work in oil pricing.

"The 42 cent reduction, which we put into effect May 1, means the contract price of North Slope crude on the West Coast went from \$16.25 to \$15.83," said Paul Laird, spokesman for Standard. He said the new contract pricing

method uses the previous month's average daily spot price for the oil. "So our delivered contract price in June will be based on the previous month's average daily spot price for North Slope crude oil, in this example May's average would be used," Laird said.

### Bush plans to visit Alaska in June

Vice President George Bush, seeking the Republican nomination for president, will visit Alaska sometime in June, according to Sen. Frank Murkowski.

The senator, in Fairbanks to meet with constituents and others this week, said Bush probably would visit Alaska in June to talk about opening the Arctic National Wildlife Refuge to oil and gas exploration and development.

## FIRE

(Continued from page 1)

"One of the men was saying 'Car 33' was in flames and he was screaming 'Please help,'" said cleaning supervisor Zora Imanovic, who heard the man on her two-way radio as she made her way to the roof.

Firefighters found the body of an unidentified man after prying open the elevator's doors on the 12th floor about two hours after the fire was extinguished, Svider said. The building, one of the West's

today from other offices, said chairman William Start. First Interstate is the nation's eighth largest banking company, with assets of \$58.5 billion and offices in 19 states.

Anthony said at least 40 people—37 maintenance workers and three firefighters—were injured. All were treated for minor cuts, burns or smoke inhalation and released.

Broken, heat-blasted glass showered onto the streets, severing fire hoses, and fire Capt. Mike Bow-

UAF  
(Continued from page 1)  
at those sites.

artist and former UA regents, and Dr. Louis O. Quam, former chief

academic procession begins  
7 p.m. Speaker Ronald L. Graham. After common consent. Reception in the

**Looking Back**

**CLEANUP**  
(Continued from page 1)  
joined the Rubbish Reductions to help coordinate various aspects of the cleanup.  
A special Cleanup Day preview presentation will be made at Tues



Official Business

# Alaska State Legislature

SENATE

*Committee on Finance*

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

SENATE LETTER OF INTENT

SENATE BILL 510

It is the intent of the Legislature that the Senate Committee on International Trade prepare an analysis of Alaska's coal royalty and tax structure to determine ways to encourage the export of Alaska's coal while maintaining a fair return to the State of this non-renewable resource. In addition, the Committee will consider and report on various incentive opportunities and scientific research needs that will stimulate greater production and utilization of Alaska coal. This analysis and report shall be submitted to the Legislature by January 20, 1989.

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: \_\_\_\_\_  
 Title: SB 510 An Act relating to a ceiling BRU: Minerals Management  
on the state's royalty rate on coal leases  
 Sponsor: Fahrenkamp Components: \_\_\_\_\_  
 Requestor: Senate Resources

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

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)

The Department of Natural Resources anticipates no additional expenditures will be necessary to implement this legislation, however, there will be revenue impact, as discussed on the attached sheet.

Prepared by: Lawrence Ostrovsky Phone: 4/21/88  
 Division: Commissioner's Office Date: 465-2400

Approved by Commissioner: [Signature] Date: 465-2400  
 Agency: Department of Natural Resources

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

**RECEIVED**  
 APR 26 1988

LEGISLATIVE FINANCE

Fiscal Impact of SB 510

<u>Year</u>	<u>Coal Tonnage</u>	<u>Producers</u>	<u>5% AGV Revenue</u>	<u>SB 510 Revenue</u>	<u>Annual Revenue Loss</u>	<u>Cumulation Revenue Loss</u>
1988	1,600,000	UCM	\$1,536,000	\$480,000	\$1,056,000	\$1,056,000
1989	1,600,000	UCM	\$1,536,000	\$480,000	\$1,056,000	\$2,112,000
1990	1,600,000	UCM	\$1,536,000	\$480,000	\$1,056,000	\$3,168,000
1991	2,600,000	UCM and Wishbone	\$2,496,000	\$780,000	\$1,716,000	\$4,884,000
1992	2,600,000	UCM and Wishbone	\$2,496,000	\$780,000	\$1,716,000	\$6,600,000

Prepared by: DMR Division of Mining  
April 22, 1988

Fiscal Note for SB 510

Page 2 of 2

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P.2

# USIBELLI COAL MINE, INC.

MARKETING  
2173 University Avenue So.  
Suite 101  
Fairbanks, Alaska 99709  
(907) 479-2630  
FAX 479-2793

Am has seen

March 31, 1988

Representative Sam Cotten  
P.O. Box V (MS 3100)  
Juneau, Alaska 99811

Dear Representative Cotten:

You now have a better understanding of the Healy Project - the brain-child of Usibelli Coal Mine and Brown and Root - which, if feasible, holds some extremely positive and far reaching implications for Alaska. We certainly appreciate your interest by devoting time during your busy schedule to learn more about this project which can provide an increment of inexpensive electrical power for the Railbelt region as well as produce an enhanced premium quality processed (dried) coal for export and domestic markets.

Although we have stressed that this project is doable in the private sector at market rate financing, there are innovative ways of utilizing the state's financial leverage to provide real tangible benefits in the form of even less expensive assured electricity rates for Railbelt consumers. This is where you come in. We ask that two actions be taken by the Legislature.

1) That the Railbelt Energy Fund be retained for its original intent pending the outcome of detailed evaluations by APA and legislative agencies of appropriate competing uses (Healy project, other coal-fired generation sites, power line upgrades and expansion, loans for completion of Bradley Lake and Enstar's natural gas pipeline from Wasilla to Fairbanks).

2) That you start to give very serious consideration to our approach to Healy Project financing which could involve using assets of the Railbelt Energy Fund to collateralize (underwrite) a loan at sub-market rates to the project. The benefit of the lower than market rate would be passed through entirely in the form of lower cost wholesale power for the consumer.

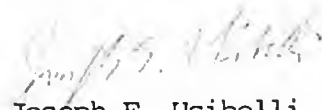
This concept, which is attractively simple, would put the Railbelt Energy fund assets to work, without spending them, totally consistent with the purpose of the fund. In this way the State of Alaska and the private sector can team up to create real opportunity for Alaska.

March 31, 1988  
Page Two

As we progress with the Healy Project we will keep you informed and hopefully garner your enthusiastic support for the venture which, outside of Oil and Gas and military spending, is the largest venture undertaken in Alaska.

Thank you again.

Sincerely,

  
Joseph E. Usibelli  
CHAIRMAN

P.S. The following "Bullet Sheet" will I hope provide you with some important perspectives on Alaska Coal.

BULLET SHEET

1) Alaska contains up to 40% of the entire U.S. coal resource base.

2) Alaska currently produces only 2/10th of 1% of the U.S. annual coal production of 900 million tons (clearly we have not reached our potential).

3) Usibelli Coal Mine is the only significant producer and currently mines 1.5 million tons per year at Healy.

4) Known recoverable coal reserves on the Usibelli Coal Mine leases contain the energy equivalence of a one billion barrel oil field.

5) In reality COAL is Alaska's most abundant non-renewable energy resource.

6) Alaskan coal in general is extremely low in sulfur - the element blamed for acid rain problems.

7) Alaskan sub-bituminous coal is the only coal of this quality moving to an international market (South Korea) - because of its high moisture content (27%), sub-bituminous coal has a lower heating value than other coal produced by Australia, Canada, China and South Africa with whom we compete.

8) It makes sense to process or dry sub-bituminous coal before shipping it.

9) It makes sense to focus an important and fundamental aspect of Alaskan energy policy on increased in-state use of coal for power generation.

10) It makes sense utilizing coal close to where it is produced for our own in-state energy needs as well as developing export markets.

11) It makes sense creating quality year-round jobs in coal mining, power plant operation, etc. as well as providing a reliable low-cost energy source which will stimulate economic activity.

12) It makes sense - very good sense - recognizing that Alaska is a coal state and adopting public policy which recognizes this economic reality.

**USIBELLI COAL MINE, INC.**

MARKETING  
2173 University Avenue So.  
Suite 101  
Fairbanks, Alaska 99709  
(907) 479-2630  
FAX 479-2793

cc for SBS10

April 27, 1988

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

Dear Representative <sup>Sam</sup> Cotten:

Please support passage of HB 560 which will fix royalty rates on coal produced from state leases in the range 5 cents to 30 cents per ton (2000 lbs).

This relief is sought as a necessary action to help ensure continuation of the Suneel (Alaska) - Korea Electric Power (KEPCO) coal supply contract. The parties are currently operating with a provisional price for 1988 (no firm price was struck) pending resolution of the royalty dispute and other concerns. The Koreans have indicated very clearly that a royalty increase cannot be assumed and could provide just cause for contract cancellation at the earliest opportunity.

Alaska coal is currently still the highest cost coal entering the Pacific-rim on a delivered heat content basis. Our present position in the export sector is both fragile and tenuous. Alaska's small coal industry should be encouraged not constrained by government action.

UCM has diligently pursued opportunities to expand exports most notably to Taiwan. At a time when this patient policy may be rewarded the state shows gross insensitivity with respect to the royalty issue. Absent royalty relief there is virtually no chance of concluding a contract with the Taiwanese.

It should also be noted that the increased royalty would impact in-state customers by putting upward pressure on electrical power rates for coal-fired generation.

I urge you to vote in favor of establishing modest, predictable royalty rates for Alaska coal. The revenue impacts to the state are minimal but, with an eye to the future, it would surely be prudent policy to preserve quality jobs and hopefully contribute to a climate in which the industry can expand.

Sincerely,

*John*

John Sims  
VICE-PRESIDENT MARKETING

I am using what influence I have to convince miners that your efforts on their behalf must be acknowledged.

BS

DDM

April 8, 1988

Mr. Joseph Usibelli, Jr.  
Usibelli Coal Mine, Inc.  
P.O. Box 1000  
Healy, Alaska 99743

Dear Mr. Usibelli:

The Department of Natural Resources has carefully reviewed Usibelli Coal Mine, Inc.'s (UCM), request for royalty relief for coal leases ADL 20633 and 51545.

The Commissioner of the Department of Natural Resources has the discretion to waive, suspend, refund, or reduce the royalty under two circumstances:

- (1) if she finds that such a reduction is necessary to promote development; or
- (2) if she finds the lease cannot be successfully operated at the royalty level.

Usibelli Coal Mine based its request for royalty relief on the "necessary to promote development" provision and did not assert that the operation cannot be successfully operated with the increased royalty. Therefore, our analysis was limited to the consideration of whether a royalty reduction is necessary to promote development.

Generally, requests for royalty reduction in order to promote development are granted as an incentive to extract resources not recoverable under current operating practices. In this instance, the argument has been made that an increase in royalty, as required by regulations adopted by the Department in 1982 (see 11 AAC 85.220) will adversely affect future development.

UCM has been paying a coal royalty of 5¢ per ton on one lease and 10¢ per ton on a second lease, for an average royalty of 7.5¢ per ton. This rate equals less than one-half of one percent of adjusted gross value.

April 8, 1988

Under the 1982 regulations, all coal leases issued or renewed by the State of Alaska must include a minimum royalty of 5 percent of adjusted gross value (5 percent AGV).

UCM requested a royalty rate equivalent to 1.5 percent adjusted gross value (1.5 percent AGV).

The issue becomes whether the 5 percent AGV royalty rate is reasonable in terms of both a fair return to the state and in terms of promoting development. In this regard, it is helpful to note that coal royalty in New Mexico is 12.5 percent of all revenues; Montana's rate is 12.5 percent of gross value; and Wyoming's coal royalty is 12.5 percent of the selling price. The current royalty for federal coal leases is 12.5 percent AGV.

In comparison, the Department finds that Alaska's lower royalty of 5 percent AGV provides both a fair return to the state, while recognizing the competitive advantage necessary for our emerging coal export industry.

Therefore, the Department cannot grant the full permanent reduction in royalty relief as requested by UCM. The information provided did not demonstrate that such a reduction for leases ADL 20633 and 51545 is necessary to promote development. However, our analysis indicates that an immediate increase in royalty as set out in regulation will put an unreasonable burden on UCM and your customers. Therefore, we find that a phased increase to the full royalty is warranted.

Under the authority granted by AS 38.05.140(d), the Department will phase in the 5 percent AGV royalty over a period of three years, as outlined in the schedule below:

<u>LEASE</u>	<u>FOR THE PERIOD</u>	<u>ROYALTY</u>
ADL 20633	Nov. 1, 1987 - April 30, 1988	\$0.29/ton
	May 1, 1988 - April 30, 1989	\$0.60/ton
	May 1, 1989 - April 30, 1990	\$0.90/ton
	After May 1, 1990	5% AGV
ADL 51545	May 1, 1987 - April 30, 1988	\$0.29/ton
	May 1, 1988 - April 30, 1989	\$0.60/ton
	May 1, 1989 - April 30, 1990	\$0.90/ton
	After May 1, 1990	5% AGV

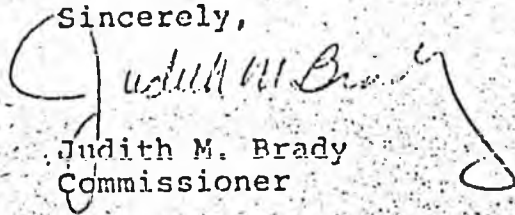
Further, the Department will grant your request for a partial refund of royalties paid at the 5 percent AGV rate during the period from May 1, 1987, for ADL 51545 and from November 1, 1987, in order to be consistent with the phased payment schedule. Such refund will be taken as credit against future royalty payments. The Division of Mining will contact you soon to outline this procedure.

Mr. Joseph Usibelli, Jr.

-3-

April 8, 1988

Sincerely,



Judith M. Brady  
Commissioner

cc: Gerald Gallagher, Director  
Division of Mining

Usibelli (Sims) to  
Senate Finance  
House Resources

THE CASE FOR ROYALTY RELIEF

In the past royalties on coal extracted from state leases were set on a cents per ton (2000 lbs) basis. The only production leases that provided this modest royalty flow in recent times were on Usibelli Coal Mine where until 1987 the rate in effect was 5 cents per ton on one lease and 10 cents per ton on another (average say 7.5 cents per ton). Back in 1982 the State of Alaska adopted new regulations relating to coal on state lands setting new royalty levels and rentals for state coal leases. The first impact of these changes, which were vigorously opposed by the coal industry at the time, occurred when the renewal of UCM's main production leases became due in 1987. The State's DNR had no alternative but to implement the new provisions. As a consequence the royalty rate increased from an historic level of approximately 7.5 cents per ton to a figure of 5% of Adjusted Gross Value computed to be equivalent to 96 cents per ton. This was a one step increase of +1300% and is in addition to a mining production (license) tax, corporate income taxes, lease acreage rentals, black-lung tax, etc. levied by the state and federal governments. Usibelli Coal Mine faced with this royalty hike and given the current extremely difficult and sensitive situation in international markets decided to petition for relief from the full impact of the royalty hike. It is well to be aware that acts of government such as tax modifications and royalty changes are provided for in standard coal contracts as pass-throughs to the customer. Following established practices UCM would pass royalty hikes onto its customer base both at home and abroad.

Under the prevailing State of Alaska regulations, petition for relief can be made on the grounds of "inability to operate the lease successfully at the royalty level" or as a means of "promoting development". UCM clearly based its request for relief on the "promote development" provisions allowed in the regulation.

Despite overwhelming testimony in favor of royalty relief at the February public hearing in Fairbanks, Commissioner of Natural Resources decided to implement in phases the full 5% AGV formula over the period May 1, 1987 to May 1, 1990. Faced with this adverse decision issued on April 8th, 1988 in response to its petition filed on October 19, 1987, UCM has only two avenues available:

- 1) Petition the Commissioner for reconsideration - an option which is being pursued.

- 2) Seek a Legislative solution to the issue.

The latter is the subject of bills which have been introduced in both the Senate (SB 510) and the House of Representative (HB 560). I urge you to support the legislative remedy as a clean-cut expeditious means of resolving the problem.

Consistent with the "promote development" justification pursued by UCM, I offer the following comments:

- 1) Faced with a possible \$1.00 per ton increase in price the Suneel (Alaska) - KEPCO contract could falter. At present a provisional price for 1988 is in effect and any attempt to collect the royalty hike could jeopardize the contract even leading to cancellation at the end of 1988. The situation is in reality extremely serious.

- 2) UCM is poised to initiate discussions with Taipower for a

coal supply contract, following a test program conducted in 1987, which could match the tonnage being sold to South Korea. This initiative certainly cannot proceed and stands no chance of success unless royalty relief is granted.

3) Similarly an added component of cost in the form of the higher royalty would certainly dampen opportunities currently in a preliminary stage with Japanese interests.

Loss of opportunity inherent in the above actions falls fairly and squarely into the "promote development" provision of the regulations.

UCM is optimistic about its future and indeed the future of a much broader and diversified coal mining industry in Alaska providing that opportunity is nurtured and fostered by government actions not squashed and choked off. You should be aware that some encouragement for Alaska coal in international markets is taking place as rival currencies such as the Canadian and Australian units strengthen against the U.S. dollar. There are welcome signs that the glutted oversupply situation is also correcting itself and coal prices are holding steady and very selectively have improved. Alaska coal is still the most expensive coal on a delivered heat-value basis and needs every bit of encouragement and assistance.

This is no time to "shoot ourselves in the foot". I believe that as economies of scale emerge and as critical mass is generated from our present small coal industry the levels of royalty inherent in a 5% AGV formula might be reasonable. For the present and certainly into the foreseeable future it is important to do everything we can to promote the industry, and royalty constraint is a fundamental element

of promoting the development of an abundant energy resource. It is fallacious to compare Alaskan coal royalties with other coal producing states such as New Mexico, Wyoming and Colorado where the industry is established and where costs of doing business are that much lower. Note however that in the face of extreme competition the tendency has been to reduce royalties and/or severance taxes in certain states.

The action that is needed is clear and simple. Support the legislation which sets royalties at a reasonable level and assures continuing growth and interest in Alaska's coal industry.

Suneel Alaska Corporation  
Seward Coal Terminal

PHONE: (907) 224-3120  
TELEX: (CBO) 25283 SWD  
FACSIMILE: (907) 224-3931

903 OLD AIRPORT ROAD  
P.O. BOX 1708  
SEWARD, ALASKA 99664

April 13, 1988

Mr. John Sims  
Vice President  
Usibelli Coal Mine, Inc.  
2173 University Ave. South, Suite 101  
Fairbanks, AK 99709

Dear John:

Per our telephone conversation today, we are in receipt of Commissioner Brady's letter of April 8th to Joe, Jr. regarding coal royalties.

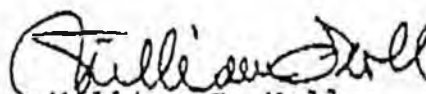
Naturally, we are keenly disappointed in the apparent results of the efforts to contain costs of Alaskan coal. Although there is some explanation offered in the Commissioner's letter, I am at a total loss in understanding this approach to answering the universal concerns expressed at DNR's public hearing in Fairbanks on February 24th.

Suneel is immediately concerned with the possible impact of the contents of the Commissioner's letter to UCM. We will be anxiously awaiting UCM's further comment. We are especially interested in knowing whether UCM will initiate any sort of appeal process.

Suneel continues to reject outright the notion of any increase in costs in any sector of coal exporting at this time. There is no justification for increases in the international marketplace.

Please keep us informed of UCM's plans and actions regarding these royalties.

Sincerely,

  
William C. Noll  
Vice President

cc: Mr. Jerry Gallagher, Division of Mining

# Suneel Alaska Corporation

## Seward Coal Terminal

PHONE: (907) 224-3120  
TELEX: (090) 25353 SWD  
FACSIMILE: (907) 224-3931

803 OLD AIRPORT ROAD  
P.O. BOX 1769  
SEWARD, ALASKA 99664

February 9, 1988

RECEIVED

FEB 11 1988  
DIVISION OF MINING

Mr. Richard C. Hundrup  
Controller  
Usibelli Coal Mine, Inc.  
P.O. Box 1000  
Healy, Alaska 99743

Dear Rick:

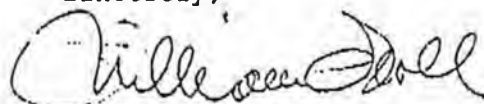
Subject your letter dated February 4, 1988, regarding the royalties on Usibelli coal.

As Suneel has continuously pointed out, the FOR price of your coal has always been far higher than other coals in the international marketplace. The Usibelli portion of the FOBST and C&F prices is disproportionately high.

Inasmuch as royalties to the State of Alaska contribute to Usibelli's costs of operation, a tight rein ought to be held in that area. The thought that those costs will be even further increased, thus greatly exacerbating an already-strained relationship with KEPCO, is simply unconscionable.

As you know very well, Suneel has already written its thoughts to Commissioner Brady and Director Gallagher at the Department of Natural Resources. Suneel will continue those communications. Suneel has already informed Director Gallagher of our intent to testify at the public hearings scheduled for February 24th. I do not see any purpose in being included on the Usibelli list, but if you wish to send us an advance copy of your planned testimony or previous written argument, we will be pleased to review it.

Sincerely,



William C. Noll  
Vice President

cc: Mr. Jerry Gallagher  
Suneel Seoul  
Mr. Howard Cohen  
Mr. John Sims

## ALASKA COAL ASSOCIATION

P.O. Box 101  
Healy, Alaska  
9 9 7 4 3

17 February 1988

Mr. Gerry Gallagher  
Alaska Department of Natural Resources  
Director - Division of Mining  
P.O. Box 7016  
Anchorage, Alaska

99510-7016

Dear Mr. Gallagher:

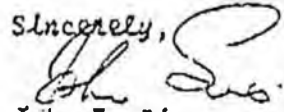
The Alaska Coal Association at its February 16th, 1988 meeting in Juneau discussed the issue of royalties on coal production from state leases.

The members of the association unanimously agreed that an increase in state royalty rates at this time would send a very discouraging message to prospective export customers, and could certainly threaten the continuation of coal exports to South Korea.

The membership is appreciative of initiatives by the state to promote and facilitate the expansion and development of Alaska's coal industry.

Your own efforts to bring sensitivity and pragmatism into the process are most welcome.

Sincerely,

  
John F. Sims  
PRESIDENT - ACA

cpb:jfs z:181/acaroyal  
cc: ACA membership



# Alaska State Legislature

Representative Mike Davis

District 19

P.O. Box V  
Juneau, Alaska 99811  
(907) 456-4930/4941

Interim Office:  
P.O. Box 81435  
Fairbanks, Alaska 99708  
(907) 456-8161

February 17, 1988

Jerry Gallagher, Director  
Division of Mining  
Department of Natural Resources  
P.O. Box 107016  
Anchorage, AK 99510-7016

Dear Mr. Gallagher:

I join with the other Interior Delegation members in concern about the increase in Usibelli Coal Mine, Inc.'s royalty for its two producing leases in Healy.

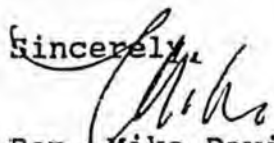
As Alaska's only operating coal mine, Usibelli has contributed significantly to economic development and employment in the Interior. Usibelli has also distinguished itself as a responsible corporate citizen and concerned member of the community.

Current regulations require all new and renewed leases to have a royalty of 5% of the adjusted gross value of the coal. However, Alaska statute allows the Commissioner of the Department of Natural Resources to waive, suspend, refund, or reduce the royalty to promote development or if the lease cannot be successfully operated under its terms.

The imposition of the 5% royalty could have a detrimental effect on Usibelli. I urge the Division to carefully consider the documentation provided by Usibelli Coal Mine Inc. regarding the impact of the royalty increase on their domestic and overseas markets. The final royalty rate should allow for profitable production, fair competition among lease holders, and just payment to the state for the public resource.

Please make my comments part of the hearing records. Thank you for the opportunity to participate in this important decision.

Sincerely,

  
Rep. Mike Davis

cc: Interior Delegation  
Usibelli Coal Mine, Inc.



Official Business

# Alaska State Legislature

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

February 17, 1988

Jerry Gallagher, Director  
Division of Mining  
Department of Natural Resources  
P.O. Box 107016  
Anchorage, AK 99510-7016

Dear Mr. Gallagher:

We are writing in support of Usibelli Coal Mine, Inc.'s (UCM) request for a reduction in royalty for their two producing leases in Healy. After reviewing their request, we believe it has merit.

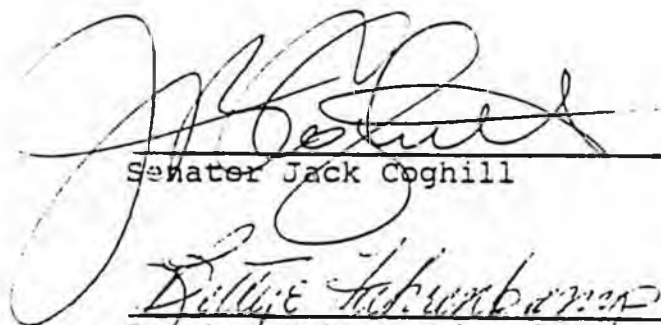
Current royalty regulations may well have a detrimental short and long term effect on UCM. Its export contract could be jeopardized and further development could decrease. Alaska statute allows the Commissioner of the Department of Natural Resources to waive, suspend, refund, or reduce the royalty to promote development or if the lease cannot be successfully operated under its terms. The "best interest" of Alaska is to keep our one existing coal mine producing.

The royalty rate should not be at a level that makes the product noncompetitive, especially considering the growth potential for the business in export markets. At the level requested by Usibelli, \$.29/ton, the product would be competitively priced in the current marketplace. Continued development, foreign and domestic, can take place and a steady, secure supply of coal for the Interior would be assured. A reduction means retaining jobs at the mine, the loading facility, and in the support industry and it means the potential for additional employment in the coal mining and related industries.

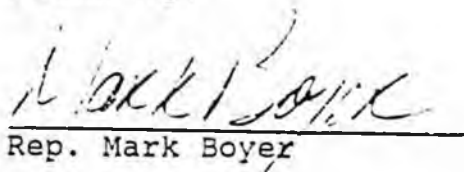
page two  
Mr. Jerry Gallagher  
February 17, 1988

Please make our comments part of the hearing records. Thank you for the opportunity to participate in this important decision.

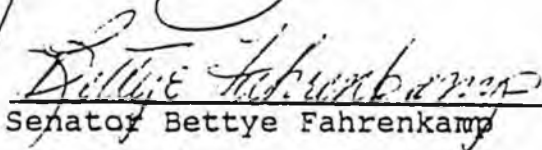
Sincerely,



Senator Jack Coghill



Rep. Mark Boyer



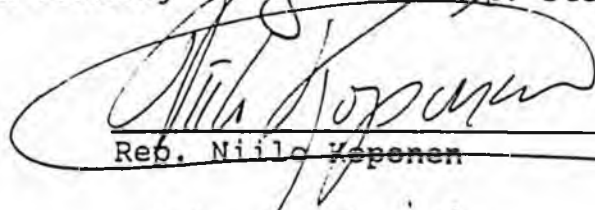
Senator Bettie Fahrenkamp



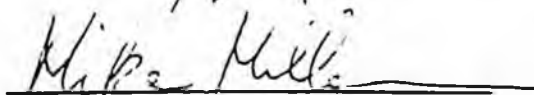
Senator Ken Fanning



Rep. Steve Frank



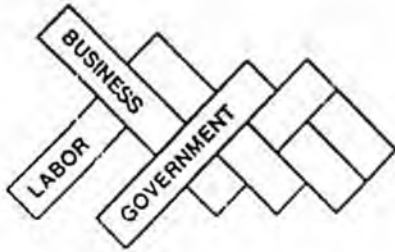
Rep. Niilo Kopenen



Rep. Mike Miller



Rep. Dick Shultz



MAR 3 1988  
**UNIFIED FAIRBANKS**

UNIFIED FAIRBANKS  
RESOLUTION URGING RESTRAINT IN LEVYING  
INCREASED ROYALTIES ON COAL

WHEREAS, the State of Alaska is proposing to collect royalties on coal produced by the Usibelli Coal Mine which represents an increase from approximately .08 per ton (current average) to 0.98 per ton (an increase of approximately 12%); and,

WHEREAS, such an increase could be passed along to the Alaska Railbelt consumer in the form of higher electricity and heating rates; and,

WHEREAS, an increase of this magnitude could price Usibelli coal out of the export markets which have earned for Alaska a total of \$78 million dollars since exports to South Korea commenced in 1985; and which are critical to the financial well being of the ARR; and

WHEREAS, the royalty increases are in addition to rental on acreage, mining license taxes and corporate taxes are paid by Usibelli Coal Mine to the State of Alaska.

NOW THEREFORE BE IT RESOLVED, that UNIFIED FAIRBANKS urges restraint in levying royalties on coal produced by Usibelli Coal Mine at Healy. Royalty rates should be maintained at present levels, especially in view of the difficult international market conditions.

This resolution was passed at the meeting of Unified Fairbanks on Tuesday, February 23, 1988.

Sincerely,

UNIFIED FAIRBANKS

  
Charles P. Rees, President

CPR:slg:resolution 2-25-88:UFMN2