

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5935 HOUSE LABOR & COMMERCE

339

Memorandum/Pete Spivey
April 3, 1989
Page 4

CFAB to be unable to sell a permit to any but an Alaska fisherman, why not pass a law which says no one can sell a permit to a non-Alaskan? On the surface, that would certainly solve the "permit drain" problem which troubles so many Legislators!

EEC:dmv

APR 12 '89 11:04

P.2
APR 12 1989HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE


P.O. BOX Y, JUNEAU 99811

(907) 465-3892



April 12, 1989

To: Senator Fred Zharoff

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

Re: Proposed amendment to SB 82

Prior to scheduling SB 82 for a hearing before the House Labor and Commerce Committee on Tuesday, April 18, I would like you to review the attached legal opinion from Legislative Counsel, Jack Chenoweth.

To allay the concerns that prompted the request for a legal opinion, I've asked Jack to draft a proposed amendment to SB 82 that would limit individuals, partnerships, joint ventures and corporations, other than CFAB, from participating in more than twenty percent of the loans for particular types of limited entry permits in any given area (i.e. Bristol Bay set net permits). I would like your response to this proposed amendment prior to submitting it to the Committee for their consideration.

Please contact me or Ginger Baim at 4954 if you have any questions or need additional information.

cc: Representative Ben Grussendorf
Representative George Jacko
Representative Lyman Hoffman

dd/gb

APR 12 '89 11:04

P.3

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU ALASKA 99811
907 455 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 31, 1989

SUBJECT: Amendment of lending practices of the
Commercial Fishing and Agriculture Bank
(SB 82)

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

FROM: Jack Chenoweth
Legislative Counsel

This is intended to respond to your March 27 memo. Let me take the questions in numerical order.

I

Your first question asks how the authority of persons who borrow from the Bank is changed by the bill.

The changes proposed in this bill, in the main, affect obligations and responsibilities of the Commercial Fishing and Aquaculture Bank. The legislation does little to limit the authority of persons who are clients of the Bank. Rather, as to those persons, there is some broadening of borrowing opportunity and purportedly some better protection of the interests of state fisherman. Specifically,

(1) a borrower may pledge a second limited entry permit as collateral for a loan, if the pledge gains loan approval and the permit pledged meets the requirements of AS 44.81.230(b) [proposed AS 44.81.230(e), added by bill section 3];

(2) a borrower anticipating foreclosure on a loan for which an entry permit serves as collateral may nominate an otherwise qualified person to assume the obligation; the borrower may thereafter transfer to the person nominated the rights and liabilities, thereby keeping the permit "within the family" [proposed AS 44.81.230(f), added by bill section 3]; that nomination may be made

APR 12 '89 11:05

P.4

Representative Dave Donley

Page 2

March 31, 1989

much later in the foreclosure process than is now authorized, and is exercisable as late as 30 days after the giving of notice by the bank to the borrower that the limited entry commission is refusing to purchase a loan in default that is secured by a permit [proposed AS 44.81.250(b), added by bill section 6];

When these provisions are read and applied in conjunction with bill section 2 ("issue certificates of loan participation"), I am advised that the purpose is to permit the defaulting borrower who holds the limited entry permit to better assure that the permit remains in the community or area without being assigned to a person from another part of the state or to a non-resident. The plan, as I understand it, is this:

CFAB's concept provides for the seller [i.e. the current permit holder] to share in the credit risk of a CFAB-financed purchase, while CFAB in turn shares with the seller the financial protection of the bank's ability to foreclose its permit lien in the event of immediate default. This is accomplished by the seller using a portion of the sale proceeds to purchase a participation in the loan involved, and by the purchaser designating the seller to assume the debt in the event of default and foreclosure. By purchasing the loan participation, the seller also becomes entitled to receive a market interest rate on the deferred portion of the sale proceeds.

II

You next inquire as to possible dilution of a permit holder's control of a permit if other entities take a loan participation role, as SB 82 authorizes.

An entity other than a natural person may not hold a limited entry permit. Limited entry permits are to be issued only to individuals. See AS 16.43.140 and AS 16.43.990(5), limiting the definition of "person."

As noted in part I, at least as to loans involving permits that are tending toward default or are in default, the changes proposed by AS 44.81.210(a), 44.81.230, and 44.81.250(b) may involve second parties in the risk and obligation of an assumed CFAB loan. The certificate of loan

Representative Dave Donley
Page 3
March 31, 1989

participation may involve an entity other than a person, but nothing in the changes proposed by SB 82 would modify the requirement in AS 16.43 that a limited entry permit be held by an individual.

The extent of a loan participation arrangement is not otherwise addressed by AS 44.81 or AS 16.43, so, as drafted, the extent of the influence of the "outside" parties on the permit holder is probably a matter between the parties or, in some instances, between the parties and the Bank.

III

You ask whether one or more groups, making use of the loan participation role authorized by SB 82, could exert disproportional control in a fishery.

I suspect it is possible for one entity--or several--having substantial assets and influence, to associate with individual permit holders through loan arrangements evidenced by certificates of loan participation in order to gain the benefit of a significant economic advantage in a profitable fishery. At the same time, the probability of that occurring seems remote, given the high cost of acquiring limited entry permits that allow entry into the most lucrative fisheries. The likelihood of consolidation of permits around one individual or group through execution of a series of loan participation arrangements is more theoretical than real.

Current law would seem to prohibit wielding of comparable influence in a fishery on the basis of Bank loan participation arrangements simply because the statutes do not now authorize these arrangements.

IV

You raise a question as to the relationship between a permit holder and the Bank that may differ from the relationship between a permit holder and another lender.

The holder of a limited entry permit may use that permit as loan collateral only in conjunction with the Commercial Fishing Loan Act, AS 16.10.310, and loans from the Commercial Fishing and Agriculture Bank. The distinguishing feature is the explicit authority of the state Commercial Fishing Loan Act program managers and the Bank to foreclose on

• APR 12 '89 11:07

P.6

Representative Dave Donley
Page 4
March 31, 1989

the permit in the event of default. See AS 16.10.338 (a limited entry permit may be used as collateral for a Commercial Fishing Loan Act loan); AS 44.81.210(a)(20) (authorizing the Bank to make loans to individual commercial fishermen for limited entry loans). If a person with a permit secures a loan from any other source, the permit holder may not collateralize the loan--may not look to the permit as security for the loan. AS 16.43.150(g). In other words, the Commercial Fishing Loan Act and the Bank hold preferred exclusive positions as makers of loans involving the use of limited entry permits as collateral.

It is for that reason that the loan arrangements evidenced by certificates of loan participation involving third parties, limited entry permits, and Bank loans--an idea proposed in this legislation--have significance. The exact nature of a loan arrangement is not spelled out in the statute. It is left to the permit holder and the other party to the loan arrangement to define their own terms and conditions. The analytical statement from which I drafted appears to assume, though it is not altogether certain that it would be true in every instance, that a loan arrangement entered into under authority proposed to be granted in bill section 2 would involve a family member or person within the same community as the defaulting borrower.

I can't provide you with any other insight into prospective loan arrangements than this. The committee may want to call Senator Zharoff or the principal executive of the Bank to testify concerning the extent of the relationship that might be anticipated under a loan arrangement provision.

V

Finally, you inquire after limitations on the sales of foreclosed permits to persons who are state residents.

AS 44.81.250 addresses loan deficiencies and foreclosed limited entry permit transfers involving defaulted Bank loans. It sets up a scheme of permit buy-backs by the Commercial Fisheries Entry Commission and allows a defaulting borrower to nominate someone to accept the obligations of the loan. Under other amendments made by the bill to this section, the opportunity of the borrower to nominate a qualified person to assume a loan that is extended. Section 8 of the bill adds a new subsection to AS 44.81.250 covering situations in which there is no buy-back and no nomination of a qualified

APR 12 '89 11:08

P.7

Representative Dave Donley

Page 5

March 31, 1989

person is made. The addition authorizes the Bank to sell a permit to a commercial fisherman who has been a state resident for two years.

Our drafting followed the language set out in the model suggested. The model used the word "may," though the accompanying memorandum said: "[The change made by this section requires that any foreclosed permit sale by CFAB be to a resident Alaska fisherman . . ." I interpret that to mean that the party seeking the change believed that use of "may" virtually compelled the Bank's selection of a resident.

Indeed, "may" be as close as the legislature could reasonably come to require designation of a resident in the transfer of the permit. Substitution of "shall" would likely hasten a challenge to the requirement by a non-resident who, having sufficient resources, is willing and able to purchase the permit outright, relieving the borrower of the debt obligation. With the language rewritten to direct or require the permit's sale to a resident, the non-resident could challenge denial of sale of the permit to him or her, claiming a privileges and immunities violation. Without extensive research on the point, I suggest that the claim could prevail. The limited entry permit, as you know, was intended to promote protection and rational development of the resource in the state. Within the regulated fishery, residency has not been an issue. Historically, the issuance and sale of entry permits does not draw distinctions between residents and non-residents. Efforts in this section to limit transfers of defaulted entry permits to residents fairly invites a direct challenge by an interested non-resident.

To the balance of the question, I can only note my observation made earlier: under the mechanism proposed, at least in theory, it would be possible, albeit not likely, for the Bank, over an extended period, to steer the award of defaulted limited entry permits to one or another individuals having substantially similar interests, so that the individual(s) might exercise substantial or disproportional influence in the fishery.

JC:gc:kb
WKG8/099



UNITED FISHERMEN OF ALASKA

211 4th Street, Suite 106
Juneau, AK 99801
907-586-2820

UNITED FISHERMEN OF ALASKA

Resolution 89-1

WHEREAS Alaska has a system of limited entry that regulates participation in many of the commercial fisheries of the state, and

WHEREAS in many of the rural areas of the state there has been a permit drain caused by sales of locally owned permits to persons living outside of the area, and

WHEREAS the permit drain is detrimental to the economies of rural Alaska, and

WHEREAS the opportunity for some Alaskans to obtain financing for the purchase of permits is limited by lending requirements that they cannot satisfy, and

WHEREAS the Alaska Commercial Fishing and Agriculture Bank was created to serve the credit needs of resident Alaska fishermen, and

WHEREAS CFAB has developed a concept that would increase the opportunities for Alaskans to obtain permit financing, and

WHEREAS the implementation of the CFAB concept will require changes to the statute that governs the cooperative,

NOW THEREFORE BE IT RESOLVED that United Fishermen of Alaska endorses and supports the creation of a loan program that will increase the opportunities for more Alaskans to purchase limited entry permits, and

BE IT FURTHER RESOLVED that United Fishermen of Alaska supports the purposes and intents of Senate Bill 82 and House Bill 108.

Theo Matthews
President

July 14, 1989
Date

STATE OF ALASKA

COMMERCIAL FISHERIES ENTRY COMMISSION

Twomley
STEVE COWPER, GOVERNOR

P.O. BOX KB
JUNEAU, ALASKA 99811-0302
PHONE: (907) 465-4681

January 11, 1989

The Honorable Fred F. Zharoff
Alaska State Legislature
M/S 3100

Re: CFAB Legislation
SB 82

Dear Senator Zharoff:

Thank you for the opportunity to review your legislation introduced on behalf of the Alaska Commercial Fishing and Agriculture Bank, which I understand has become SB 82.

CFAB's president, Mr. Ed Crane, developed the idea behind the legislation about a year ago, and we have discussed the proposal with him a number of times since then. We are very pleased that CFAB perceived the need and took the initiative to develop this remedy. We also commend you for having introduced this legislation.

SB 82 appears to the Entry Commission to be sound. For those Alaskan fishermen wishing to take advantage of such an opportunity, this legislation should be helpful. In direct response to your question, we would be happy to support this legislation. Please do not hesitate to contact us, if we can provide you with any further information.

Cordially,

COMMERCIAL FISHERIES ENTRY COMMISSION

Bruce Twomley, Chairman
Rich Listowski, Commissioner
Phil Smith, Commissioner

by: _____

cc: Bob Evans
Deputy Chief of Staff
Office of the Governor
M/S 0101



Doyle
 ascn begins April 1,
 the year is a new
 offered by Squire
 \$379 per person rate
 ip airfare from
 du, plus a car rental
 a break and enjoy
 t a reasonable price.
 PS -- label your
 and outside with
 and phone number,
 y of your travel
 ntly colored ribbon
 your luggage or put
 the side to reduce
 ing up the wrong
 ing overseas, try to
 purchases in one
 r receipts in one
 ie going through

YOUTH can plan
 mmer for minimal
 i hostels. A 1989
 stel Handbook is
 225 hostels in the
 to \$13 a night. A
 ip Catalogue has
 vacations in 22
 ublications are
 ur 25-cent stamps
 i Hostels, 425
 No. 307, San

Jacko/Zharoff Bills Ease

(Continued from Page 4)
 fling," he says, "but that's the way it is with any loan nowadays. In summary, what we're going to do is share CFAB's collateral position with the permit seller if he or she will share in a credit risk that doesn't meet CFAB's normal standards. The best way to explain it is to give an example."

"Imagine a commercial fisherman, Peter, who has decided to retire. He's willing to sell his permit for \$150,000 to his daughter, Mary, who's been part of his crew for the past few seasons. Mary learns that neither CFAB nor the State's Division of Investments is willing to lend her the money to buy the permit outright. If Peter and Mary are both willing, here's what can happen using our approach. CFAB will lend \$150,000 to Mary -- Mary gives that \$150,000 to Peter, who transfers the permit to her, subject to CFAB's lien. Peter then returns \$75,000 (half of the \$150,000) to CFAB, who gives Peter a document which says that he now owns a half interest in Mary's loan. Mary also signs a document which says that if she defaults on the loan and loses the permit to foreclosure, Peter will replace her as the borrower and as the owner of the permit."

"When Mary makes her first loan payment to CFAB -- let's say it's \$15,000 principal and \$6,000 of interest -- half of the principal (\$7,500) and half

of the interest (\$3,000) will be paid by CFAB to Peter. That pattern will continue until the loan is paid in full."

Crane says that fishermen and others he has discussed the program with have pointed out a lot of benefits. "Obviously, Mary's been given her start and Peter has the satisfaction of helping her without exposing himself to the risks of an unsecured loan. Peter doesn't have the problem of deciding what to do with \$150,000 all at once, because he'll be getting his second \$75,000 spread out over the term of the loan. Not only that, but Peter will be earning CFAB's interest rate for permit loans, currently 11-1/2 percent, on his investment. There will be a commercial lender, CFAB, between Peter and Mary, which should help avoid the problems that often arise when one family member owes money to another. At the same time, Peter is free to help Mary out along the way if he feels that's appropriate."

At CFAB, they're excited about the potential program. Says Crane, "We believe it will work for a lot of situations -- especially in rural Alaska. At the same time, we don't want to create the expectation that it can be applied in every case. Credit is a judgment business, so we'll probably still disappoint some folks. But if Peter and Mary, and others like them, are motivated to make it work and can strike a reasonable deal with each other, we're anxious to give it a try. Ideally, the State Legislature will pass one of these bills in time for us to put the idea to work later this spring, when lots of permit transfer activity takes place."

Jacko and Zharoff, and their staffs, are working within the legislative process to meet that time frame. Both bills have been subjected to committee hearings, with more scheduled. There are many legislators interested in finding ways to help keep limited entry permits in rural Alaska. Representative Jacko's House Bill 108 is co-sponsored by Representatives Grussendorf, Navarre, and Cato, while Senators Sturgulewski, Elliason, Duncan, Binkley, Szymanski, Kelly, Adams, Coghill, Kerttula, and Pearce have joined Zharoff as co-sponsors of Senate Bill 82.

Take advantage of
 our saturation coverage!
 Call Matt,
 907 562-4485

VA Releas

(Continued from Page 6)
 higher incidence of PTSD
 psychological disorders.

The VA will be analyzing other study results to assess on the agency and to determine effectiveness of VA programs the needs of Vietnam. Currently, the VA operates a 194 Vietnam Veteran Outreach which provide counseling to veterans and their families on a variety of readjustment problems, including PTSD. Veterans also receive PTSD treatment at VA's 172 medical centers and 160 hygiene clinics. Eighty-nine VA centers have developed programs specifically for PTSD. The RTI study indicates that 15 percent of Vietnam veterans with PTSD (approximately 100,000) have not received treatment from the VA.

Fish Expe

(Continued from Page 5)
 as marine mammals, pollution
 and marine debris. Formerly
 editor and chief of the public
 relations section of the
 Department of Fish and Game,
 that she was a legislative aide and
 of her own public relations company.

In announcing the appointment of a new
 governor stressed Benton
 Iudicello's knowledge of politics
 than their knowledge of fisheries
 issues. "As this administration
 turns up the heat on the
 government to curtail the high
 interception of Alaska fish, we
 need experts who are also politically
 savvy," Cowper said.

Test Well

(Continued from Page 5)
 of the 900 blocks offered in the
 Arco and other oil companies
 the cost of drilling and the information
 from the well. Shell E&P and
 USA have indicated they will
 exploring for crude oil in Bristol
 soon as they can obtain the necessary
 governmental approval.

Meanwhile, the state is preparing
 appeal to the U.S. Supreme Court.
 Governor Steve Cowper has asked
 U.S. House Interior Appropriations
 Committee not to budget any funds
 the Bristol Bay lease area.

Eagle Enterprises, Inc.
 562-2331 700 W. Intern'l Airport Rd.
 Anchorage, Alaska 99502
 225-8585 1719 Tongass
 Ketchikan, Alaska 99901

SERVICE
 RESCUE AIDS
 VESTS
 CONS
 TS

• Switlik • Givens •
 • B.F. Goodrich •
 • Dunlop • Elliott •

REPAIR STATION FOR INFLATABLE
 BOAT STATION NO. 501-27
 1 No. 64

Life Boats.

Survival -- Our Concern"



Jacko/Zharoff Bills Ease Lending for Permit Transfers

There will be a new alternative available to many commercial fishermen searching for a satisfactory way to help a son, daughter, or other young person get started in a fishing business, if legislation introduced by District Senator Fred Zharoff and District 26 Representative George Jacko is enacted.

Senate Bill 82 and House Bill 108 are identical, and they will make changes to the statute which governs the operations of Alaska Commercial Fishing and

Agriculture Bank (CFAB). CFAB is one of the primary financing sources for resident Alaska commercial fishermen. It is the only lender aside from the State's own Commercial Fishing Loan Program which can finance the purchase of a Limited Entry Permit and use the permit itself as collateral.

"Contrary to popular belief," says CFAB President Ed Crane, "Loan officers don't enjoy saying no. We have felt especially frustrated about those times

when a young man, for example, would come and apply for a CFAB loan in order to buy his father's permit; but after we had taken a look at the son's experience and financial circumstances, we'd wind up turning him down. It's tough for a young person to get started in any business, especially when it requires the kind of investment that commercial fishing does. It's even harder when the young person is in a rural community with limited other opportunities to work in order to earn and save money for that investment. It seemed to us at CFAB that a distressing number of those permits would ultimately wind up being sold outside the village or even to fishermen from Outside."

Crane continues, "About a year ago, Senator Zharoff challenged us to find a way to address as many of those situations as possible. Representative Adelheid Herrmann also offered encouragement, and as soon as Mr. Jacko was elected, he became very interested. As a matter of fact, I believe HB 108 is one of the first bills that Representative Jacko

introduced."

According to Crane, the idea that CFAB came up with is fairly simple but seems complicated to describe. "It's true that there will be lots of paper shuf-

(See Jacko/Zharoff Page 14)

Fish Valuable in District N

by Senator Fred Zharoff

All of us know the fishing industry is very valuable in District N. But calculating an exact figure for that value can be a difficult exercise.

In order to obtain more exact information, I recently asked the Department of Revenue to determine the value of the fisheries resources harvested in District N. The figures they came up with are somewhat rough because fisheries management regions -- especially in regard to the International Pacific Halibut Commission -- do not exactly match election district boundaries.

Still, the department gave my request their best try and came up with some impressive figures.

In 1985, the ex-vessel value of the fisheries resources in District N was \$213,301,360; in 1986, \$369,409,474. In 1987, it was \$500,008,220. And in 1988, it was \$707,086,940.

One can see that the value more than tripled in three years. Everyone has noticed the dramatic increase in fishing industry activity throughout District N, including the Aleutian Chain, the Alaska Peninsula, Bristol Bay, Kodiak Island

Commercial Boat Repair

"Quality Fishing Vessel Repair By Fishermen"

- HULL REPAIR
- DECKS, HOUSES
- WATER, FUEL, HYDRAULIC TANKS
- ENGINE & SHAFT INSTALLATION
- BOTTOM PAINTING
- HAUL-OUTS TO 150 TONS
- MAST & BOOM FABRICATION
- RIGGING
- DECK MACHINERY INSTALLATION
- CONVERSIONS



Call

206-282-3746

2360 W. Commodore Way

Seattle, WA 98199

Clip and send today...
Send me your FREE BROCHURE
Name _____
Address _____
City _____ State _____ Zip _____
Phone _____
Vessel Size _____
RAN



INDIAN BLANKET

Special Offer Free Blessing Size 72x90, And Choice of Blue Or Brown, Authentic Indian Design Each One Personally Blessed By Wise Owl, Medicine Man And Chief Drowning Creek

EXAMINER'S COMMENTS AND CONCLUSIONS	NUMBER
-------------------------------------	--------

SCOPE OF EXAMINATION

In compliance with Chapter 81 of the Alaska Statutes, an examination of the Alaska Commercial Fishing and Agricultural Bank was done by the Department of Commerce and Economic Development, Division of Banking, that contains financial information prepared in accordance with generally accepted accounting principles.

LOAN PORTFOLIO

Examination ratios and trends indicate continued improvement in the quality of the loan portfolio and the reduction of adversely classified assets. The ratio of adversely classified loans to total loans decreased from 32.25% at the previous examination on November 30, 1987, to 14.09% at this examination. Similarly, the ratio of overdue loans to gross loans decreased from 37.36% at the previous examination to 22.10% at present. All of the examination ratios demonstrate a dramatic improvement from the bank's condition at the first examination by the Division of Banking on April 29, 1985.

Non-earning loans totaled \$12,761,089 at the previous examination compared to \$3,768,757 at present. The amount of loans classified loss decreased from \$1,891,596 to \$252,611. These reductions were accomplished primarily through loan work-outs and collection of problem loans. The loan loss reserve of \$2,229,916 represents 6.04% of total loans and leases and appears adequate.

Year-to-date earnings have been substantial due to the aforementioned collection of problem loans which contributed approximately \$3,048,000 of interest income on a one-time basis. The bank had been using its net operating loss carryforward to offset its federal income tax liability, but the increased earnings for the current fiscal year may deplete the tax credit.

BANK POLICIES AND PRACTICES

The present management team has significantly reduced the volume of problem and non-earning loans, and appears to have brought the bank back to prudent lending practices and profitable operations. This has been done during a depression that continues to challenge the Alaska economy. It is appropriate at this time to review the Alaska statutes with an eye to the future to determine what the role the bank will play in helping to develop the infrastructure in Alaska. Some forethought is needed to provide the flexibility to examine new business opportunities and markets to enable the bank to better fulfill its statutory mandate.

State Banking Authority (Signature)

Frank J. Puschak by: Terry L. Lutz

Examiner (Signature)

State Bank Authority (Signature)

1. Does the bank have written loan policies which are periodically revised and approved by the Board of Directors? Provide an overall assessment of said policies specifically noting any deficiencies and remedial measures anticipated.

In response to recommendations from external auditors, the bank adopted a new policy for non-accrual loans. The loan policy was considered outdated at the previous examination and has yet to be revised. Management agreed that it was time to update the loan policy and would strive to do so as soon as possible.

2. Does the bank have a written investment policy incorporating liquidity objectives and funding strategies that is periodically reviewed and approved by the Board of Directors? Provide an overall assessment of said policy commenting on any deficiencies in the policy or any significant deviations therefrom which did not have the prior consent of the Board or Investment Committee.

The bank does not have a formal investment policy at this time. Because there are no deposit liabilities, the bank's present source of funds is the National Bank for Cooperatives (formerly Spokane Bank for Cooperatives). As long as subject bank performs satisfactory it can borrow from the National Bank for Cooperatives.

3. Comment on the extent to which recommendations made by supervisory authorities and internal/external auditors are reviewed and implemented by management.

To the extent that external auditors recommendations appear applicable to the operations of subject bank, management is receptive to and implements such recommendations.

4. Comment with respect to management's knowledge, adherence, and willingness to comply with governing laws, regulations, and the Corporation's Statements of Policy.

Bank management has a good knowledge of applicable statutes and regulations, and demonstrates a willingness to comply with same.

5. Indicate whether or not the bank is owned or controlled by any individual or other interest. If so, state particulars as to the extent of control and amount of stock held by such interests.

The major shareholder is the State of Alaska by virtue of its initial capitalization of the bank. However, these shares are non-voting and the State of Alaska exercises no control over bank policies and procedures other than by enactment of statutes or regulation.

6. Describe the bank's relationship with any bank holding company and/or affiliate specifically commenting upon any unfavorable trends which could adversely affect the bank.

The bank formed a subsidiary, OFAB Services Inc., which is presently dormant. The purpose to enable the bank to pursue business opportunities related to its type of lending. One example would be to offer its specialized vessel mortgage and foreclosure experience to other financial institutions.

7. Comment on other matters relating to administration, supervision, and control by directors and management.

No comment.



SENATOR FRED F. ZHAROFF
ALASKA STATE LEGISLATURE

P.O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:

P.O. BOX V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

SECTIONAL ANALYSIS FOR DRAFT BILL

"An Act relating to loans and lending practices of the Alaska Commercial Fishing and Agriculture Bank; providing an exemption for the bank's membership stock and certain other securities issued by the bank from registration under the Alaska Securities Act; and providing for an effective date."

SECTION 1 PURPOSE.

Explains the rationale behind the bill.

SECTION 2

New paragraph (12) added to 44.81.210(a).

Gives CFAB the power to issue loan participation certificates.

SECTION 3

New subsections (e) and (f) added to 44.81.230.

- (e) Allows a borrower to pledge more than one limited entry permit as security for a loan. This will be of benefit to fishermen who have multiple permits and are trying to expand their operations. They will be able to use their limited entry permits as financial assets to leverage the funds they need to purchase vessels, gear, etc. They can diversify and spread fixed costs over more fisheries. This will be of particular benefit to fishermen who have little liquidity, but substantial equity in existing permits.
- (f) Allows a borrower to nominate another person to assume the debt on a permit loan. This way the individual who holds a loan participation certificate can take over the loan in the case of foreclosure.

SECTION 4

Amendment to subsection (b) in 44.81.235.

Corrects an oversight in the existing statute by allowing a loan made to purchase a limited entry permit to be included when a single permit is pledged to secure multiple loans.

SECTION 5

Amendment to subsection (c) in 44.81.235.

Corrects an oversight in the existing statute by allowing CFAB to refinance a loan which is made to purchase a limited entry permit.

Under the current statute, CFAB may accept a permit as collateral when refinancing loans for fishing vessels, fishing gear, set net sites, and working capital, but not loans which are for the purchase of a permit.

SECTION 6

Amendment to subsection (b) in 44.81.250.

Makes this section of the existing CFAB statute consistent with the amendment in paragraph (f) of Section 3, above, by including a reference to the nomination of a person to assume debt.

SECTION 7

Amendment to subsection (a) in 44.81.250.

Adds reference to loans for the purchase of limited entry permits to the statute regarding CFAB's legal rights during foreclosure.

SECTION 8

New subsection (e) added to 44.81.250.

Describes the procedure CFAB shall follow when it has repossessed a limited entry permit.

SECTION 9

New paragraph (12) added to 45.55.140(a).

Exempts CFAB from the state's securities registration requirements. This restores the exemption CFAB had in statute when it was originally created. The exemption is currently granted to banks, savings institutions, savings and loan associations, trust companies, foreign governments, employee benefit plans, insurance companies, credit unions, nonprofit organizations, and others. The exemption will allow CFAB to offer loan participation certificates and remove the question of whether this transaction must comply with the extensive requirements for securities registration. CFAB will still be subject to annual audits by the Division of Banking, Securities and Corporations, an independent outside auditor, and, upon legislative instruction, by the Legislative Audit Division, as provided for in 44.81.270.

SECTION 10

Immediate effective date.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 3, 1989

FURTHER REFERRALS: FINANCE

Date of Committee Action: 4-20-89

The LABOR & COMMERCE Committee considered:

SB 82

SENATE BILL NO. 82 [CFAB LOANS & LENDING PRACTICES]
"An Act relating to loans and lending practices of the Alaska Commercial Fishing and Agriculture Bank; providing an exemption for the bank's membership stock and certain other securities issued by the bank from registration under the Alaska Securities Act; and providing for an effective date."

RECOMMENDATIONS:
[] be replaced with C/S House L&C [] the same title
[] have 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): (Dept) APPROVES PREVIOUS: (Date/Dept)
[] fiscal impact _____ [] fiscal note(s) _____
[] zero fiscal note _____ [] zero fiscal note(s) _____
[] zero with analysis _____ [] zero fn/analysis _____

SIGNING DO PASS:

[Handwritten signatures]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<i>[Signature]</i>		X	
<i>[Signature]</i>		✓	

[Handwritten signature]

Chairman's signature

6-0312Ab
Chenoweth
4/19/89

A M E N D M E N T

OFFERED IN THE HOUSE

TO: SB 82

BY THE LABOR AND

COMMERCE COMMITTEE

Page 1, line 29, after "ventures":

Insert ", but the bank may not issue a certificate of loan participation if the certificate would allow participation by the member, individual, corporation, partnership, or joint venture in loans that individually or cumulatively involve more than 20 percent of the commercial fishery entry permits issued for one type of gear in a specific fishery resource administrative area"

PROPOSED
AMENDMENT

OFFERED IN THE HOUSE

TO: SB 82

BY THE LABOR AND

COMMERCE COMMITTEE

Page 1, line 29, after "ventures":

Insert ", but the bank may not issue a certificate of loan participation if the certificate would allow participation by the member, individual, corporation, or joint venture in loans that individually or cumulatively involve more than 20 percent of the commercial fishery entry permits issued for one type of gear in a specific fishery resource administrative area"

HOUSE LABOR AND COMMERCE COMMITTEE


ALASKA STATE LEGISLATURE

P.O. BOX Y, JUNEAU 99811

(907) 465-3892

April 12, 1989

To: Senator Fred Zharoff

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

Re: Proposed amendment to SB 82

Prior to scheduling SB 82 for a hearing before the House Labor and Commerce Committee on Tuesday, April 18, I would like you to review the attached legal opinion from Legislative Counsel, Jack Chenoweth.

To allay the concerns that prompted the request for a legal opinion, I've asked Jack to draft a proposed amendment to SB 82 that would limit individuals, partnerships, joint ventures and corporations, other than CFAB, from participating in more than twenty percent of the loans for particular types of limited entry permits in any given area (i.e. Bristol Bay set net permits). I would like your response to this proposed amendment prior to submitting it to the Committee for their consideration.

Please contact me or Ginger Baim at 4954 if you have any questions or need additional information.

cc: Representative Ben Grussendorf
Representative George Jacko
Representative Lyman Hoffman

dd/gb

STATE OF ALASKA
THE LEGISLATURE

FOUCH V STATE CAPIT

JUNEAU ALASKA 99811

907 465 3800

LEGISLATIVE AFFAIRS AGENCY


MEMORANDUM

March 31, 1989

SUBJECT: Amendment of lending practices of the
Commercial Fishing and Agriculture Bank
(SB 82)

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

FROM: Jack Chenoweth
Legislative Counsel



This is intended to respond to your March 27 memo. Let me take the questions in numerical order.

I

Your first question asks how the authority of persons who borrow from the Bank is changed by the bill.

The changes proposed in this bill, in the main, affect obligations and responsibilities of the Commercial Fishing and Aquaculture Bank. The legislation does little to limit the authority of persons who are clients of the Bank. Rather, as to those persons, there is some broadening of borrowing opportunity and purportedly some better protection of the interests of state fisherman. Specifically,

(1) a borrower may pledge a second limited entry permit as collateral for a loan, if the pledge gains loan approval and the permit pledged meets the requirements of AS 44.81.230(b) [proposed AS 44.81.230(e), added by bill section 3];

(2) a borrower anticipating foreclosure on a loan for which an entry permit serves as collateral may nominate an otherwise qualified person to assume the obligation; the borrower may thereafter transfer to the person nominated the rights and liabilities, thereby keeping the permit "within the family" [proposed AS 44.81.230(f), added by bill section 3]; that nomination may be made

Representative Dave Donley
Page 2
March 31, 1989

much later in the foreclosure process than is now authorized, and is exercisable as late as 30 days after the giving of notice by the bank to the borrower that the limited entry commission is refusing to purchase a loan in default that is secured by a permit [proposed AS 44.81.250(b), added by bill section 6];

When these provisions are read and applied in conjunction with bill section 2 ("issue certificates of loan participation"), I am advised that the purpose is to permit the defaulting borrower who holds the limited entry permit to better assure that the permit remains in the community or area without being assigned to a person from another part of the state or to a non-resident. The plan, as I understand it, is this:

CFAB's concept provides for the seller [i.e. the current permit holder] to share in the credit risk of a CFAB-financed purchase, while CFAB in turn shares with the seller the financial protection of the bank's ability to foreclose its permit lien in the event of immediate default. This is accomplished by the seller using a portion of the sale proceeds to purchase a participation in the loan involved, and by the purchaser designating the seller to assume the debt in the event of default and foreclosure. By purchasing the loan participation, the seller also becomes entitled to receive a market interest rate on the deferred portion of the sale proceeds.

II

You next inquire as to possible dilution of a permit holder's control of a permit if other entities take a loan participation role, as SB 82 authorizes.

An entity other than a natural person may not hold a limited entry permit. Limited entry permits are to be issued only to individuals. See AS 16.43.140 and AS 16.43.990(5), limiting the definition of "person."

As noted in part I, at least as to loans involving permits that are tending toward default or are in default, the changes proposed by AS 44.81.210(a), 44.81.230, and 44.81.250(b) may involve second parties in the risk and obligation of an assumed CFAB loan. The certificate of loan

participation may involve an entity other than a person, but nothing in the changes proposed by SB 82 would modify the requirement in AS 16.43 that a limited entry permit be held by an individual.

The extent of a loan participation arrangement is not otherwise addressed by AS 44.81 or AS 16.43, so, as drafted, the extent of the influence of the "outside" parties on the permit holder is probably a matter between the parties or, in some instances, between the parties and the Bank.

III

You ask whether one or more groups, making use of the loan participation role authorized by SB 82, could exert disproportional control in a fishery.

I suspect it is possible for one entity--or several--having substantial assets and influence, to associate with individual permit holders through loan arrangements evidenced by certificates of loan participation in order to gain the benefit of a significant economic advantage in a profitable fishery. At the same time, the probability of that occurring seems remote, given the high cost of acquiring limited entry permits that allow entry into the most lucrative fisheries. The likelihood of consolidation of permits around one individual or group through execution of a series of loan participation arrangements is more theoretical than real.

Current law would seem to prohibit wielding of comparable influence in a fishery on the basis of Bank loan participation arrangements simply because the statutes do not now authorize these arrangements.

IV

You raise a question as to the relationship between a permit holder and the Bank that may differ from the relationship between a permit holder and another lender.

The holder of a limited entry permit may use that permit as loan collateral only in conjunction with the Commercial Fishing Loan Act, AS 16.10.310, and loans from the Commercial Fishing and Agriculture Bank. The distinguishing feature is the explicit authority of the state Commercial Fishing Loan Act program managers and the Bank to foreclose on

Representative Dave Donley
Page 4
March 31, 1989

the permit in the event of default. See AS 16.10.338 (a limited entry permit may be used as collateral for a Commercial Fishing Loan Act loan); AS 44.81.210(a)(20) (authorizing the Bank to make loans to individual commercial fishermen for limited entry loans). If a person with a permit secures a loan from any other source, the permit holder may not collateralize the loan--may not look to the permit as security for the loan. AS 16.43.150(g). In other words, the Commercial Fishing Loan Act and the Bank hold preferred exclusive positions as makers of loans involving the use of limited entry permits as collateral.

It is for that reason that the loan arrangements evidenced by certificates of loan participation involving third parties, limited entry permits, and Bank loans--an idea proposed in this legislation--have significance. The exact nature of a loan arrangement is not spelled out in the statute. It is left to the permit holder and the other party to the loan arrangement to define their own terms and conditions. The analytical statement from which I drafted appears to assume, though it is not altogether certain that it would be true in every instance, that a loan arrangement entered into under authority proposed to be granted in bill section 2 would involve a family member or person within the same community as the defaulting borrower.

I can't provide you with any other insight into prospective loan arrangements than this. The committee may want to call Senator Zharoff or the principal executive of the Bank to testify concerning the extent of the relationship that might be anticipated under a loan arrangement provision.

V

Finally, you inquire after limitations on the sales of foreclosed permits to persons who are state residents.

AS 44.81.250 addresses loan deficiencies and foreclosed limited entry permit transfers involving defaulted Bank loans. It sets up a scheme of permit buy-backs by the Commercial Fisheries Entry Commission and allows a defaulting borrower to nominate someone to accept the obligations of the loan. Under other amendments made by the bill to this section, the opportunity of the borrower to nominate a qualified person to assume a loan that is extended. Section 8 of the bill adds a new subsection to AS 44.81.250 covering situations in which there is no buy-back and no nomination of a qualified

Representative Dave Donley
Page 5
March 31, 1989

person is made. The addition authorizes the Bank to sell a permit to a commercial fisherman who has been a state resident for two years.

Our drafting followed the language set out in the model suggested. The model used the word "may," though the accompanying memorandum said: "[The change made by t]his section requires that any foreclosed permit sale by CFAB be to a resident Alaska fisherman . . ." I interpret that to mean that the party seeking the change believed that use of "may" virtually compelled the Bank's selection of a resident.

Indeed, "may" be as close as the legislature could reasonably come to require designation of a resident in the transfer of the permit. Substitution of "shall" would likely hasten a challenge to the requirement by a non-resident who, having sufficient resources, is willing and able to purchase the permit outright, relieving the borrower of the debt obligation. With the language rewritten to direct or require the permit's sale to a resident, the non-resident could challenge denial of sale of the permit to him or her, claiming a privileges and immunities violation. Without extensive research on the point, I suggest that the claim could prevail. The limited entry permit, as you know, was intended to promote protection and rational development of the resource in the state. Within the regulated fishery, residency has not been an issue. Historically, the issuance and sale of entry permits does not draw distinctions between residents and non-residents. Efforts in this section to limit transfers of defaulted entry permits to residents fairly invites a direct challenge by an interested non-resident.

To the balance of the question, I can only note my observation made earlier: under the mechanism proposed, at least in theory, it would be possible, albeit not likely, for the Bank, over an extended period, to steer the award of defaulted limited entry permits to one or another individuals having substantially similar interests, so that the individual(s) might exercise substantial or disproportional influence in the fishery.

JC:gc:kb
WKG8/099

HOUSE LABOR AND COMMERCE COMMITTEE

ALASKA STATE LEGISLATURE


P.O. BOX Y, JUNEAU 99811

(907) 465-3892

March 27, 1989

M E M O R A N D U M

To: Jack Chenoweth, Attorney
Legislative Legal Services

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

Re: Legal opinion on effects of SB 82

SB 82, relating to CFAB lending practices, is currently before the House Labor and Commerce Committee. Several questions have been raised about the possible effects of the changes to law proposed under SB 82. Prior to scheduling a hearing on the measure, I would like your response to the following:

1. What can members and other individuals, corporations, partnerships, and joint ventures do under SB 82 that they cannot do under current law?
2. Historically, there have been strong sanctions against any entity other than an individual person from owning or having a controlling interest in a limited entry permit. Could SB 82 dilute an individual's control over a limited entry permit by allowing members and other individuals, corporations, partnerships, and joint ventures to "carry the paper" or otherwise assume some proprietary interest in a permit?
3. Could these groups exert control over a particular permit holder or group of permit holders in a particular fishery if they established a proprietary interest in enough permits in a given area or fishery under the changes proposed in SB 82? How is this different than what could happen under current law?
4. How is the relationship between a permit owner and a bank that has provided financing for a particular permit, as is often the case under current law, different than the kind of relationship that may occur between a permit owner and a member or other individual, a corporation, a partnership or a joint venture that has provided financing for a permit? How would the relationship differ if the permit owner were also a member of the corporation, partnership or joint venture that provided financing?
5. Under Section 8 of SB 82, a bank may sell a permit to an individual commercial fisherman who has been a state resident for two years immediately preceding the date of the sale. Why may instead of shall? What is to prevent a bank from "handpicking" individuals over whom they may be able to exert some control in so far as how that permit holder may work the fishery? Again, can this section result in a situation where some entity other than an individual may exert control over a fishery?

I would appreciate your response to these questions at your earliest convenience so that we may proceed with hearing SB 82. Please call Ginger Baim at 4954 if you have any questions or need additional information.

SB82 file

BRISTOL BAY DRIFTNETTERS' ASSOCIATION

3605 Arctic Blvd., Suite 742 Anchorage, Alaska 99503

(907)562-2161, Ext. 742

279 - 5208

2 Donley
Anchorage, Alaska
99503

April 15, 1989

Representative Dave Donley
Alaska State Legislature
Juneau, AK 99811

RE: Amendment to HB 108 (CFAB)

Dear Representative Donley:

Recently I wrote in support of 108, and urged speedy passage to facilitate this season's business. Still a good idea, I think.

But I'm writing about one aspect of this bill, which you may be discussing. That is, the final bill should not become a loop hole to allow a few people to own more of our inshore limited entry fisheries, while others do the work for them. It is important to the limited entry concept that entry be permitted to as many participants as practical. It is crucial to the system that it not become owned by some small group who is then "selling" these rights to individual serfs, in perpetuity. In short, again an ownership class and a worker class.

In supporting this bill, I assumed that it would not allow such a situation to develop. It would seem that the way to keep the status quo, would be to consider both parties as permit holders for purposes of CFEC eligibility to participate in other limited fisheries. This should not restrict any existing rights, and would avoid the situation of one of these parties having more rights than other permit holders. If there are no technical problems something like this should work OK. Regarding the open and highseas fisheries, we should encourage Alaskans as we don't have a proportionate share of the high seas. Now, NPFMC is strongly tending toward limited entry in those fisheries, which would make it even more difficult for Alaskan to matriculate into them.

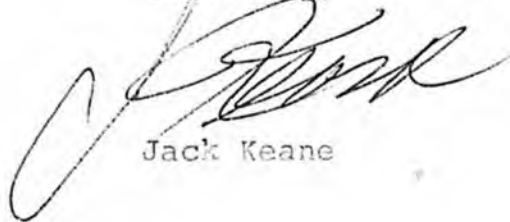
TAX considerations: I can't quite make out whether a permit is eligible for installment sale under the 1986 changes. Perhaps so under "business personal or real property under \$150,000". If so HB 108 could be of some tax help by making an installment sale possible. This could help someone selling out for retirement or for other reasons.

As it now stands, someone holding a permit through the high inflation years faces an unattractive situation. The seller would pay the highest rate on the entire amount of "capital gains". Quotations because there is a difference between a capital gain and inflation, and our country seems confused about that. In addition, the seller would have to recapture all the depreciation on the boat. Usually the full sale price of a boat more than five years old. Fair enough, but still adds to the overall tax problem of the seller. In some circumstances the seller could end up a net cash loser in the year of sale.

For a taxpayer facing some low income years due to retirement or injury the possibility of an installment sale could help, and would be consistent with other small business sellers.

I'd like to know how this is coming along. If I can be of any help, please let me know.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Jack Keane', written in dark ink.

Jack Keane

*Jack Keane
2152 Dawson St.
Anchorage, Alaska
99508*

BRISTOL BAY SALMON ENHANCEMENT ASSOCIATION

Board of Directors

Chairman Stosh Anderson, Regional Planning Team

Jim Bingman—Regional Planning Team

AIFMA—Norm Stadem

Egegik Setnet. Assoc.—Claudia Anderson

BBDA—Jack Keane

Paula Cullenberg—U of A Marine Adv. Prog.

Andy Golia—Fisherman

ADFG FRED div.—Jerry Madden

Frank Logusak—Fisherman

Olaf Mathisen—U of A Fisheries & Ocean Sci.

Don Rogers—FRI

Brad Barr—Concerned Area M Fishermen

WASP—Mark Holum

Last spring a volunteer group of Bristol Bay fishermen formed the Bristol Bay Salmon Enhancement Association (BBSEA). After watching aquaculture associations throughout Alaska improve their fisheries, BBSEA undertook a few projects in Bristol Bay using a small amount of state funding. Concerned primarily with habitat enhancement, BBSEA is developing beaver dam bypasses, beluga and marine mammal studies, fish ladders and lake food enhancement to improve fry survival. Your direction will determine which projects are implemented.

BBSEA needs your support to continue these initial efforts. In order to develop an organization which is responsive to all user groups, we need volunteers to fill board vacancies. We welcome representatives of user groups and those who have time to offer. We need your advice and would appreciate your comments on the attached reply card.

Comments & Suggestions _____

What is your opinion about financial support for enhancement? Are you willing to reinvest 1% of your Bristol Bay salmon fishery into habitat enhancement? YES ___ NO ___

If your reply is no could you tell us why?

Could you spend some of your time to serve on the board of directors?

Name

Organization

Phone

(Return Address)



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

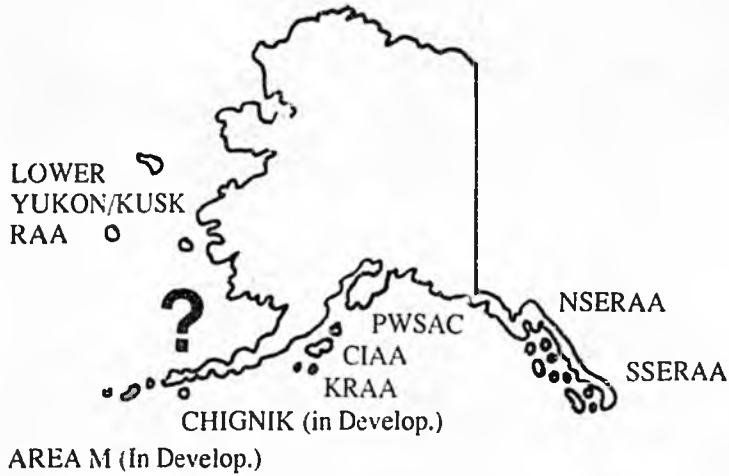


BUSINESS REPLY CARD
FIRST CLASS PERMIT NO. 81 AT DILLINGHAM, AK

POSTAGE WILL BE PAID BY ADDRESSEE

**Bristol Bay Salmon
Enhancement Association**
Box 1130
Dillingham, Alaska 99567

ALASKA'S REGIONAL ASSOCIATIONS



**BRISTOL BAY SALMON
ENHANCEMENT ASSOCIATION**
Box 1130
Dillingham, AK 99567

Bulk Rate
U.S. Postage
PAID
Permit #69
Anchorage, AK

Permit Holder
Preprint Label
All Areas

*DAVE - A COPY OF
OUR FIRST BBSEA
MAILER -
JACK*

DID YOU CATCH ENOUGH FISH LAST SEASON?

STATE OF ALASKA
THE LEGISLATURE

POUCH - STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 3, 1989

SUBJECT: Sectional analysis
(Work Orders 6-0395 and 6-0953)

TO: Representative Mike Davis
Chair, Legislative Council

FROM: Theresa L. Bannister *TB*
Legislative Counsel

This provides a sectional analysis of the above described bill.

As a preliminary matter, note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 (AS 10.06.010). Eliminates an inconsistency with AS 10.06.485 by making the loan approval requirement applicable to employee loans as well as loans to officers and directors. Clarifies that a corporation has the power to make guarantees to eliminate a question that they were included in corporate powers. Gives corporations the powers of a limited or general partner. Corrects the term for joint ventures.

Section 2 (AS 10.06.020). The current content is designed to protect third parties from an ability of the corporation, or any shareholder asserting a derivative claim, to evade liability for an act or undertaking of a corporate agent by claiming that it was done without real authority. The amendment allows the corporation to assert limitations on the powers of corporate agents set forth in the articles, but not to assert limitations found in its bylaws or board resolutions as a defense to the third party's claim. This change would protect shareholders to the extent that the articles of the corporation contained such limitations on either the nature of agency power or the manner of its exercise.

Representative Mike Davis
Page 2
March 3, 1989

Section 3 (AS 10.06.025(a)). Deletes language that created an internal conflict within AS 10.06.

Section 4 (AS 10.06.105(c)). Clarifies that the subsection is not intended to prevent a limited partnership from using the word "limited" in its name.

Section 5 (AS 10.06.130). Eliminates the need for a corporation to take any other steps to protect the exclusivity of its name and allows the corporation to enjoin the use of the same or a deceptively similar name.

Section 6 (AS 10.06.343). States that the corporation may issue stock purchase rights or options for shares of any class or classes. Substitutes "shall" for "must" as a technical change.

Section 7 (AS 10.06.348). Coordinates AS 10.06.348 with the proposed new AS 10.06.349.

Section 8 (AS 10.06.349). Allows a corporation to issue shares without certificates and establishes a procedure for notifying the shareholder of certain information that is usually disclosed on certificates under other sections of AS 10.06.

Section 9 (AS 10.06.353). Coordinates section with new ability to issue certificateless shares.

Section 10 (AS 10.06.355). Coordinates section with new ability to issue certificateless shares.

Section 11 (AS 10.06.356). Allows a corporation to establish procedures by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The purpose of the section is to facilitate communication between the corporation and the beneficial owner.

Section 12 (AS 10.06.358(c)). Eliminates the unqualified requirement that the amount of distributions payable in property be based on generally accepted accounting principles.

Section 13 (AS 10.06.358(d)). Eliminates the unqualified requirement that the eligibility to make certain

distributions is limited to corporations that classify their assets under generally accepted accounting principles.

Section 14 (AS 10.06.358(e)-(f)). Allows a board to determine that a distribution is not prohibited either by generally accepted accounting principles or by accounting practices and principles that are fair and reasonable in the circumstances. States that statements and determinations prepared or arrived at under generally accepted accounting principles are fair and reasonable, but that the fairness and reasonableness of statements and determinations made under other practices and principles must be proved by the corporation.

Section 15 (AS 10.06.360). Changes the insolvency test. Allows existing directors to make the distribution and then determine whether the distribution did, in fact, render the corporation unable to meet its current debts. If it does, the corporation could theoretically recover the illicit dividend from the shareholders.

Section 16 (AS 10.06.385(b)). Coordinates subsection with new ability to issue certificateless shares.

Section 17 (AS 10.06.385(d)). Coordinates subsection with new ability to issue certificateless shares.

Section 18 (AS 10.06.405). States that the failure of a corporation to hold an annual meeting at the required time does not cause the corporation to forfeit its status, does not cause a dissolution of the corporation, and does not affect the validity of corporate action. Restores to the corporations code the section from the former corporations code that indicated that the failure did not affect the validity of corporate action.

Section 19 (AS 10.06.410). Substitutes a ten-day minimum notice of shareholders' meeting for the current twenty-day requirement because some corporations find it difficult to know 20 days ahead that a meeting will be necessary. Makes a minor change relating to the mailing of the meeting notice to a shareholder's new address.

Section 20 (AS 10.06.418(b)). Makes two minor changes relating to revocation of a proxy.

Section 21 (AS 10.06.418(e)). Defines the term "pledgee" and makes a citation change to coordinate with the changes to AS 10.06.425.

Section 22 (AS 10.06.418(f)). Coordinates the section with the changes in AS 10.06.425.

Section 23 (AS 10.06.418(g)). Gives to a transferee (of a share having an otherwise irrevocable proxy) title clear of the proxy unless the transferee knows about the proxy provision or the proxy, or the irrevocability or notice of the proxy appears on the certificate.

Section 24 (AS 10.06.420(c)). Allows a shareholder's authorized attorney-in-fact to vote for the shareholder in person or by written proxy.

Section 25 (AS 10.06.420(e)). Clarifies the intent of the subsection. States that shares may not be voted if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and if the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for the directors of the second corporation. This section is based on a public policy objection to permitting a corporate subsidiary that is presumably under the direct or indirect control of the parent to vote shares of the parent at a meeting of the parent corporation's shareholders.

Section 26 (AS 10.06.420(i)). Coordinates subsection with new ability to issue certificateless shares.

Section 27 (AS 10.06.421). Based on the Revised Model Business Corporation Act, its purpose is to provide guidelines for election judges and directors when deciding whether to accept certain documents.

Section 28 (AS 10.06.425(a)). Indicates that the subsection doesn't invalidate an irrevocable proxy that complies with AS 10.06.418(e).

Section 29 (AS 10.06.425(b)). Rewrites the subsection to expressly allow shareholders to enter into a voting agreement or any other agreement if the agreement is consistent with this chapter.

Section 30 (AS 10.06.430(a)). Makes technical wording changes to make the use of the term "books and records of account" consistent throughout the section.

Section 31 (AS 10.06.430(b)). Conforms the section to the demand and scope provisions of Sec. 16.02(b)-(c) of the Revised Model Business Corporation Act. Requires that a shareholder's demand to inspect the books and records of a corporation be made with reasonable particularity. Places some burden on the shareholder making the request in order to avoid harassment requests. Substitutes "directly connected" for "relevant". Makes a technical wording change to make the use of the term "books and records of account" consistent throughout the section.

Section 32 (AS 10.06.430(c)). Makes technical wording changes, including one to make the use of the term "books and records of account" consistent throughout the section.

Section 33 (AS 10.06.433(a)). Exempts a corporation with less than 100 shareholders from the requirement of sending out an annual report, unless its articles or bylaws impose the requirement.

Section 34 (AS 10.06.435(a)). Coordinates subsection with new ability to issue certificateless shares.

Section 35 (AS 10.06.450(c)). Is taken from Sec. 8.30(c) of the Revised Model Business Corporation Act and indicates when a director cannot be considered to be acting in good faith.

Section 36 (AS 10.06.450(f)). Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for directors. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 37 (AS 10.06.453(a)). States that the board consists of one or more members. Establishes how the number of directors is fixed. Restricts changing the number of directors to amendment of the articles, if the articles fix the number of directors. Sets the number of directors at three if the number is not otherwise set.

Section 38 (AS 10.06.453(b)). Coordinates subsection with new language of AS 10.06.453(a).

Section 39 (AS 10.06.465(d)). Allows a director to resign at any time.

Section 40 (AS 10.06.470(a)). Coordinates subsection with new language of AS 10.06.453(a).

Section 41 (AS 10.06.470(b)). Allows a corporation to establish in its bylaws the machinery for holding a special board meeting or a meeting of a committee designated by the board. Shortens the general provision relating to the minimum required written notice of the meeting from 20 to 10 days and notice by other listed means from 72 to 24 hours. The general requirement that notice of a special meeting must disclose the proposed agenda is made subject to bylaw provisions.

Section 42 (AS 10.06.483(d)). Corrects a citation. Deletes the reference to "share certificates" because they are covered by another section and there was a conflict.

Section 43 (AS 10.06.483(e)). Allows officers a limited right to rely on legal counsel and public accountants.

Section 44 (AS 10.06.483(f)-(g)). Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for officers. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 45 (AS 10.06.576(f)). Coordinates subsection with new ability to issue certificateless shares.

Section 46 (AS 10.06.576(g)). Coordinates subsection with new ability to issue certificateless shares.

Section 47 (AS 10.06.578(c)). Coordinates subsection with new ability to issue certificateless shares.

Section 48 (AS 10.06.580(f)). Coordinates subsection with new ability to issue certificateless shares.

Representative Mike Davis
Page 7
March 3, 1989

Section 49 (AS 10.06.605(b)). In addition to technical changes, indicates that a corporation may dissolve if one of the three listed situations occurs.

Section 50 (AS 10.06.528(d)). Coordinates subsection with changes to AS 10.06.425(d).

Section 51 (AS 10.06.530(e)). Coordinates subsection with changes to AS 10.06.425(e).

Section 52 (AS 10.06.633(a)). Allows the commissioner to dissolve a corporation if the corporation is delinquent six months in paying its biennial corporation tax. Deletes paragraph (8) since AS 10.06.155 (registration of agent by nonresident with controlling interest) is repealed by sec. 57 of the bill.

Section 53 (AS 10.06.828). Makes an application for a certificate of authority or any other application subject to a filing fee.

Section 54 (AS 10.06.855). Requires that fees and charges provided for in AS 10.06 be paid in advance.

Section 55 (AS 10.06.960). Updates the citation for the Alaska Native Claims Settlement Act.

Section 56 (AS 10.06.960(e)-(f)). Grants the boards of native corporations the authority to amend their articles without the necessity of a vote of the shares if the purpose is to bring the articles into conformity with federal law. Defines "act" for the section.

Section 57 (AS 10.06.990(12)). Deletes the term "controlling interest" since it is not used in AS 10.06.

Section 58 (AS 10.06.990(47)). Defines "entire board" for the chapter.

Section 59 (AS 10.06.155). Repeals AS 10.06.155, "Registration of agent by non-resident with controlling interest".

Section 60 gives the bill an effective date.

TLB:lmb
L7/024

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH - STATE CAPITOL
JUNEAU, ALASKA 998
907 485 2800

March 3, 1989

The Honorable Mike Davis
Chair, Alaska Legislative Council
Pouch V, State Capitol
Juneau, Alaska 99811

Re: Bill on the Alaska Corporations Code (AS 10.06)
(6-0953A and 6-0395A)

Dear Representative Davis:

The attached bills (one for the House and one for the Senate) are submitted to the Alaska Legislative Council pursuant to AS 24.20.075 with the request that they be introduced in the Sixteenth Legislature. A sectional analysis accompanies the bills.

The bills are the product of work done by the Alaska Code Revision Commission and the Task Force for the Alaska Corporation Code and represent a consensus of changes and additions to AS 10.06 which passed the Legislature during the second session of the Fifteenth Legislature.

By way of background, AS 10.06 (CSHB 322(Jud)(efd am S)), passed the House by a vote of 38-0 and the Senate by a vote of 14-4. During the final week of consideration of this bill, both individuals and groups indicated to various legislative members that they had not had sufficient time to consider the wholesale revision of the Alaska's for-profit corporation code (bills virtually identical to the bill that finally passed the Legislature were introduced and considered by the Legislature beginning in 1982 through 1988). In an effort to allow additional comments on AS 10.06, Senator Kelly offered an amendment in the Senate to postpone the effective date of the bill until July, 1989. The Legislature approved the amendment and the bill was forwarded to Governor Cowper where it was signed into law.

The purpose of the delayed effective date was to allow for the creation of a task force (the ACC Task Force) representing those interests which wanted additional time to consider

Representative Mike Davis
Page 2
March 3, 1989

AS 10.06 to propose changes and amendments to the bill as passed for consideration by the Legislature prior to the July 1989 effective date. The Task Force was comprised of the following interests:

1. Erik LeRoy representing the Alaska Bar Association's Business Law Committee and the interests of Native Village Corporations;
2. Willis Kirkpatrick, Director of the Division of Banking, Corporations and Securities (Mr. Kirkpatrick chaired the Task Force);
3. David Wolf representing the Alaska Federation of Natives and the interests of the Native Regional Corporations;
4. J.P. Tangen representing the interests of the State Chamber of Commerce;
5. John W. Abbott representing the Alaska Code Revision Commission.

The Task Force was also to have included Elizabeth Johnstone because she had earlier led a group of five attorneys designed by the Alaska Federation of Natives to work with the Code Revision Commission in tailoring the new code so that it reflected the interests of Alaska Native Corporations. Her whereabouts were unknown and, as such, she did not participate. A representative of the Anchorage Chamber of Commerce was also contacted to participate in the Task Force but did not do so.

The Task Force first met in November of 1988 and essentially finished its work (which was approved by the Alaska Code Revision Commission) on February 28, 1989. The draft bill accompanying this letter of transmittal is basically the work product of the Task Force. Although the Task Force has not seen the final form of the bill, it is our understanding that the Task Force agrees with the changes proposed by the bill.

Although the bill appears lengthy, in fact the number of changes is minimal. In many instances, sections of AS 10.06 which are being modified are duplicated in their entirety, even though only two or three words are added or deleted. New sections have been added to clarify the duties of offi-

Representative Mike Davis
Page 3
March 3, 1989

cers and directors so that the duties appear in respective sections dealing with directors or officers (the provisions generally mirror each other in language). In other sections of the bill, substantive changes have been made to AS 10.06, which substantive changes are reflected in the sectional analysis accompanying this letter of transmittal. A member of the Alaska Code Revision Commission will be available to testify as to the legal ramifications of each such change at any committee hearings.

The work of the Task Force has enhanced the clarity of AS 10.60 by the addition of new language spelling out what corporate conduct is acceptable. It also reflects the needs of a cross-section of the Alaskan community that will be operating under the corporations code. We feel that the changes made are good ones, are defensible and should be made to make AS 10.06 an even better statutory product. I would encourage the Legislative Council to give this bill serious consideration and to encourage its expeditious passage in both houses of the Legislature.

Because time is short for consideration of this bill, and because there may be questions concerning the changes and amendments, I can make myself available for telephone or teleconference consultation concerning the draft bill. Again, the Commission would appreciate your consideration of this bill which, if passed by the Legislature, will take effect at the same time that AS 10.06 is scheduled to become law in Alaska.

Respectfully submitted,

Tamara Cook for

John Abbott
Chair
Alaska Code Revision Commission

JA:gc
WKG7/087

Enclosure



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-18-89

PLACE: C#17

SUBJECT OF MEETING:

HB 96
HB 284
SCR 21
SB 82

HB 108
HB 13
SCR 41

HB 166

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
✓ ED CRANE	CFFB	5260 LUPIN PL. ANC	99507	562-7556	276-2007	(Y) N	SB 82
✓ Bob Bartholomew	DOTMPF	P.O. Box 2 Juneau		463-3237	465-3911	(Y) N	HB 284
✓ Tom Lawson	DCED	PO Box D JUNO	99811		465-2017	Y (N)	SCR 21 Available for Q
✓ Paul Rolpen	D.O.F	Pouch D - "	99811		465-7515	(Y) N	SCR 41
✓ MARTHA FISCHBACH	SELF	Box 34496, JUNO	99803	364-2675	465-8828	(Y) N	HB 96 - Vet
✓ ROSAUN HORSCHER	Assoc Fenece A.S.A	10360 Nigh Rd	99515	522-1155	522-5289	(Y) N	HB 284
✓ Karl OHS	Sen. Zharoff	P.O. Box V, Juneau	99811		465-3473	(Y) N	SB 82
✓ Resa Terrell	A.G.C. of AL	134 No. Franklin	99801	584-1741		(Y) N	HB 284
✓ Randall Burns	Dept. of Commerce	P.O. Box D-216 Juneau, AK 99811			465-2535	(Y) N	HB 96
✓ Dean Paddock	Self	Box 20312 Juneau 99802		788-4231	463-4970	(Y) N	SB 82
✓ Scott Burgess	AMC	217 2nd St Suite 200 Juneau 99801			6-1325	(Y) N	HB 284



Representative Dave Donley, Chair House Labor & Commerce Committee

SUBJECT OF MEETING:

SB 82 SB 101
 SJR 30 HB 284 HB 166
 HB 278

DATE: 4-20-89

PLACE: CA17

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
PAULA TERRELL	SENATOR KERTOLA					<input checked="" type="radio"/> Y <input type="radio"/> N	
ROSIE PETERSON	G/COVE	211 FOURTH ST. #101	99801		6-1736	<input checked="" type="radio"/> Y <input checked="" type="radio"/> N	SJR 30
Doree Gray	Sen. Kelly			3822		<input type="radio"/> Y <input type="radio"/> N	SB 101
Guy Warren	JUD DOUGLAS OFFICIALS	4362 TAKUBLUD JUNEAU	99801		9-3852	<input checked="" type="radio"/> Y <input type="radio"/> N	SB 107
166 KATE GRAHAM	UNITED FISHERMEN OF ALASKA	211 4TH ST. SUITE 106 JUNO	99801		6-2820	IF NEEDED <input type="radio"/> Y <input type="radio"/> N	SB 82 HB 166
166 Dennis Mestas	Alaska Academy of Trial Lawyers	880 'N' St. Suite 202	99501	277-4	277-4551	<input checked="" type="radio"/> Y <input type="radio"/> N	HB 166
66 Pam Kerttula	SENATOR Atty Gen	Juneau				<input type="radio"/> Y <input checked="" type="radio"/> N	HB 166
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	

S B

8 8

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

DD/GB/PC
STEVE COWPER, GOVERNOR

REPLY TO:

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

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

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

February 23, 1990

The Hon. Dave Donley, Chair
House Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Re: SB 88 -- Investment Securities
under the UCC

Dear Representative Donley:

This bill, which revises Article 8 of the Uniform Commercial Code (AS 45.08) to deal with uncertified securities, unanimously passed the Senate last month. It is currently pending before the House Labor and Commerce Committee. By letter dated February 2, 1990, Art Peterson requested an early hearing on this bill in your committee. I would like to reiterate that request at this time.

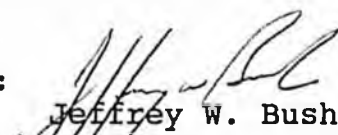
Enclosed for your reference is a copy of an article recently published by the National Conference of Commissioners on Uniform State Laws. This article concludes that it is very important for those few states that have not yet adopted the revised UCC Article 8 to do so, in order to avoid federal preemption in this area. I therefore urge your committee's prompt action on this measure.

Thank you for your consideration of this request. Please feel free to contact Art Peterson or me if you have any questions or need any additional information.

Sincerely yours,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By:


Jeffrey W. Bush
Assistant Attorney General and
Dept. of Law Legislative Liaison

The Hon. Dave Donley, Chair
House Labor & Commerce Committee

February 23, 1990
Page 2

JWB:jf

cc: Arthur H. Peterson, Assistant Attorney General
Department of Law

Bob Evans, Legislative Liaison
Office of the Governor

Willis Kirkpatrick, Director
Division of Banking, Securities and Corporations
DCED

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STEVE COWPER, GOVERNOR

REPLY TO:

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

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 406
FAIRBANKS, ALASKA 99701-4679

February 2, 1990

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

Hon. Dave Donley, Chair
House Labor & Commerce Committee
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: SB 88, investment securities under
the UCC

Dear Rep. Donley:

Please schedule an early hearing for this bill, which is now in your committee. As I have mentioned, and as John McCabe, of the National Conference of Commissioners on Uniform State Laws, testified at the joint House/Senate Labor and Commerce Committee hearing last April, the bill, although lengthy, presents a single basic idea: provide a statutory basis for uncertificated securities. In doing so, it answers a great number of questions that Alaska law does not now cover. Only a few states, including Alaska, have not yet enacted these amendments.

Thank you for your consideration.

Yours truly,

DOUGLAS B. BAILY
ATTORNEY GENERAL

By: 
Arthur H. Peterson
Assistant Attorney General

AHP:cl

cc: Willis Kirkpatrick, Dir.
Division of Banking, Securities
and Corporations
Department of Commerce &
Economic Development

Bob Evans, Legis. Liaison
Governor's Office

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

88

January 9, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

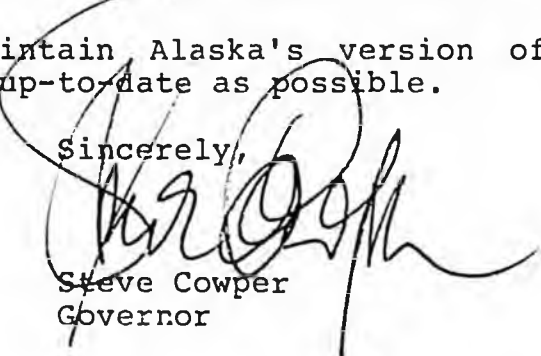
Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to enact the 1977 amendments to Article 8 of the Uniform Commercial Code, on investment securities. These amendments were developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in cooperation with the American Law Institute and the American Bar Association. These amendments, already enacted in 35 states, are essential to update Alaska's version of the Uniform Commercial Code (UCC) and recognize modern methods and necessities of financial transactions.

In trading securities, electronic transfers have become quite common and may, ultimately, make paper certificates obsolete. This bill proposes to keep up with these changes in the securities industry by introducing the concept of uncertificated securities. In the new Article 8 (AS 45.08 in Alaska's version of the UCC), the term "instrument" will no longer imply the existence of specific pieces of paper that act as evidence of obligations between people. These amendments have been endorsed by the Securities Industry Committee of the American Society of Corporate Secretaries.

This bill proposes to maintain Alaska's version of the Uniform Commercial Code as up-to-date as possible.

Sincerely,


Steve Cowper
Governor

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An Act relating to investment securities
under the Uniform Commercial Code."
Sponsor: Rules Committee
Requestor: Governor

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

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see attached

The zero fiscal projection continues through 1996. 1/11/90 MSL

Prepared by: Richard I. Peques, Director
Division: Administrative Services
Approved by Commissioner: Grace Berg. Schaible, Attorney General
Agency: Department of Law

Phone: 465-3672
Date: November 10, 1988
Date: November 10, 1988

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill substantially amended Article 8 of the Uniform Commercial Code (AS 45.08 in Alaska's version) in accordance with recommendations of the National Conference of Commissioners on Uniform State Laws (NCCUSL) in cooperation with the American Law Institute and the American Bar Association. This amended version of Article 8 modernizes the regulation of investment securities by recognizing the existence of uncertificated securities that have resulted from computerized securities transactions. Many of the investment securities financial transactions that take place today are accomplished by electronic means, without the issuance of certificates, because of the shear load of paper certificates that have hampered and burdened the financial markets. The amendments to Article 8 contemplate the elimination of much of the paper certificates formerly used in financial transactions. These amendments have been endorsed by the Securities Industry Committee of the American Society of Corporate Secretaries, and they have already been adopted by 35 states. It is not anticipated that the changes proposed in the UCC will have any direct fiscal impact on the Department of Law, because they deal with private sector transactions.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 88 (b)
PUBLISH DATE: 1/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: Investment Securities under the
Uniform Commercial Code
Sponsor: Rules
Requestor: Governor

Agency Affected: Department of Revenue
BRU: Treasury
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LANDS & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

Prepared By: Milt Barber MB
Division: Treasury

Phone: 465-2350
Date: December 29, 1988

Approved by Commissioner: Hugh Malone
Agency: Department of Revenue

Date: December 29, 1988

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

The zero fiscal projection continues through 1996. MGL 1/11/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: UCC investment securities
Sponsor: Rules Committee
Requestor: Governor Cowper

Agency Affected: Natural Resources
BRU: Management and Administration
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
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-
----------------	------------	------------	------------	------------	------------	------------

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

This bill does not affect the Department of Natural Resources.

The zero fiscal projections continue through 1996. MGL 1/4/90

Prepared by: Carol Wilson Phone: 465-2400
Division: Commissioner's Office Date: 11/23/88

Approved by Commissioner: *Sennie Grosch* Date: 11-28-88
Agency: Natural Resources

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

HOUSE COMMITTEE REPORT

(7)

Date Referred: January 17, 1990

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 3/20/90

The LABOR & COMMERCE Committee considered:

SB 88

SENATE BILL NO. 88

UCC - INVESTMENT SECURITIES

"An Act relating to investment securities under the Uniform Commercial Code."

RECOMMENDATIONS:

- [] be replaced with _____ [] the same title
- [] have 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): _____ APPROVES PREVIOUS: _____
 (Dept) (Date/Dept)


- [] fiscal impact _____ [] fiscal note(s) _____
- 2 [✓] zero fiscal note Dept. Revenue Natural Resources zero fiscal note(s) _____
- [✓] zero with analysis Dept of Law [] zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approv. column)

		Do Not Pass	No Rec	Amend
_____	Dave Douby Douby	✓		
Member Boyer	David H. Finley Fin	✓		
Mr. [unclear] Granberg	Ed O. [unclear] Bowler	✓		
Soren A. [unclear] [unclear]	[unclear] Collins	✓		


 Chairman's Signature

FISCAL NOTE

REQUEST:

Revision Date: March 22, 1990
 Title: "An Act relating to investment securities under the Uniform Commercial Code."
 Sponsor: Rules Committee/By Request of Governor
 Requestor: House Labor and Commerce
 Agency Affected: Department of Law
 BRU: Legal Services
 Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Please see the attached analysis.

Richard L. Pegues

Prepared by: Richard L. Pegues, Director
 Division: Administrative Services

Phone: 465-3672
 Date: March 22, 1990

Approved by Commissioner: Douglas B. Bailly, Attorney General
 Agency: Department of Law

Date: March 22, 1990

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

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. SB 88

This bill substantially amends Article 8 of the Uniform Commercial Code (AS 45.08 in Alaska's version) in accordance with recommendations of the National Conference of Commissioners on Uniform State Laws (NCCUSL) in cooperation with the American Law Institute and the American Bar Association. This amended version of Article 8 modernizes the regulation of investment securities by recognizing the existence of uncertificated securities that have resulted from computerized securities transactions. Many of the investment securities financial transactions that take place today are accomplished by electronic means, without the issuance of certificates, because of the shear load of paper certificates that have hampered and burdened the financial markets. The amendments to Article 8 contemplate the elimination of much of the paper certificates formerly used in financial transactions. These amendments have been endorsed by the Securities Industry Committee of the American Society of Corporate Secretaries, and they have already been adopted by 35 states. It is not anticipated that the changes proposed in the UCC will have any direct fiscal impact of the Department of Law, because they deal with private sector transactions.

Federal Preemption Remains a Serious Threat to the UCC

Article 8 of the Uniform Commercial Code once again faces a serious threat from the Federal Government. The Market Reform Act of 1989, which has been proposed to the U.S. Congress jointly by the Securities and Exchange Commission (SEC) and the Treasury Department, would, if enacted, amend the Securities Exchange Act of 1934 and preempt an undetermined portion of Article 8 and affect Article 9 as well.

The Market Reform Act (Senate Bill 648) will most likely move to the floor sometime in the coming year. The bill has four principal provisions dealing with: large stock and options trader reporting; risk assessment for holding company systems of securities firms; coordinated clearing and settlement of securities transactions, including federal preemption of UCC Article 8; and emergency market trading suspensions.

The threat of preemption actually started with the stock market crash of October 1987. The huge market movements that occurred created margin and other settlement obligations within the stock, option, and futures markets that involved extremely large cash payments. Because many of the participants in each of these markets also participate in other markets, the size of these cash flows were larger than would have been required if clearance and settlement of products in these markets were coordinated. The tremendous cash flows necessitated by the lack of coordinated settlements placed great strains on our nation's payment systems, and deprived the trading markets of liquidity at a time when it was most needed.

Several reports noted this problem and suggested that improvements in clearance and settlement, and specifically increased intermarket coordination, are among the important reforms needed. The SEC report cites the lack of uniformity between the states in the area of transfers and pledges of uncertificated securities as a contributing factor. The report specifically notes that not all the states have adopted the Article 8 Amendments to the UCC.

Section 17A(f)(1) of the Securities Exchange Act, as amended, would authorize the SEC to promulgate rules concerning the transfer and pledge of certificated and uncertificated securities. Paragraph (f)(1) would authorize the SEC to preempt state commercial laws (such as Article 8 of the Uniform Commercial Code) governing transfer and pledge of securities, but only upon making three affirmative findings: (1) that the rule is necessary or appropriate for the protection of investors or in the public interest and is reasonably designed to promote the prompt, accurate, and safe clearance and settlement of securities transactions; (2) that in the absence of a uniform rule, the safe and efficient operation of the national system for clearance and settlement of securities transactions will be, or is, substantially impeded (for example, due to the lack of scope or inconsistent standards of such state laws); and (3) that to the extent such rule will impair or diminish directly or indirectly rights of investors under state law concerning transfers of securities, that the benefits of such rule exceed the detriment to investors.

Obviously this is a serious threat to Article 8 of the UCC. The Article 8 Amendments have still not been adopted in ten states and the District of Columbia. Five states picked up the legislation in 1989, but this is not enough. The only sure way to stop federal preemption is to complete adoptions of UCC-8 everywhere.

The Market Reform Act of 1989 is likely to go to the floor for discussion early in the new year. With 11 jurisdictions still without Article 8, federal preemption is a real possibility, but one that can certainly be avoided with prompt action on our part.

To maintain the UCC as the preeminent work of the Conference will require diligent effort on all our parts. Changes in business practices and technological developments have assured changes in the UCC. It must evolve as business practices do. Commissioners cannot be slow in pressing for adoption of UCC amendments as they are completed.

S B

8 9

SB 89

Dealing With: ZOO and ZOO operator civil liability.

Sponsors: FAIKS

Cost: 0

Supporters/ Opponents: AK. ZOO SUPPORTS
NO OTHER COMMENT IN SYS.

Description: Person may not recover Damages if Damages occurred as an inherent RISK OF Attendance at a zoo.

INHERENT RISK Means: Dangers or conditions That are an integral part of a zoo and The physical Proximity of WILD Animals.

Doesn't Relieve zoo's OF Negligence.

AK. ZOO IS CURRENTLY THE ONLY ONE AFFECTED.

DIRECTED AT Those who PUT Their hands Through The Bars or ENTER The Cage when The zoo has in place all Safety Requirements.

Alaska State Legislature

Chairman
(907) 465-4523



Jan Faiks
Post Office Box V
Juneau, Alaska 99811

Senate Judiciary Committee

January 26, 1989

MEMORANDUM

TO: Representative Dave Donley, Chairman
House Labor and Commerce Committee

FROM: Senator Jan Faiks, Chairman
Senate Judiciary Committee *Jan Faiks*

SUBJECT: SB 89 An Act relating to civil liability of
zoos and zoo operators

SB 89 has been referred to the House Labor and Commerce Committee for consideration. This bill is identical to HCS SB 223 (L&C), which was passed out of your committee late last session. The purpose of this bill is to modify the civil liability of zoos and zoo operators in Alaska.

SB 89 addresses the standard of care to be applied in liability cases which may be brought against zoos and zoo operators.

It provides that a zoo operated by a government entity or a nonprofit organization may not be held absolutely liable for personal or property injuries sustained as a result of an inherent risk of attendance at the zoo. Recovery for damages must be based upon negligence on the part of the zoo operator. Accordingly, the bill requires the zoo operator to use reasonable care to prevent the injury, and to post warning signs at prominent places within the zoo and at each entrance.

"Inherent risk of attendance" is defined as the dangers or conditions that are an integral part of the physical proximity of wild animals.

There are two theories of liability which have been applied to

Members

Mike Szymanski, Vice-Chairman • Rick Halford • Drue Pearce • Pat Rodey

Out of Session

3111 C Street, Anchorage, Alaska 99503 • (907) 561-7610

such keepers of wild animals. The rule of "absolute liability" is that one who keeps wild animals on his premises must see to it at his peril that they do no damage to others. Stated differently, one who harbors a wild animal, which by its very nature is vicious and unpredictable, does so at his peril, and liability for injuries inflicted by such animal is absolute, regardless of fault.

This theory of "absolute liability" has been refuted in several cases throughout the country involving city-owned zoos, in favor of a duty of reasonable care. The argument that maintenance of a caged polar bear creates absolute liability for any injuries sustained was first rejected in a 1952 California case. The court found that the bear was properly caged and that the injury occurred when the victim strained against the barrier and brought his hand close to the bear's mouth in trying to feed it sugar. McKinney v. City and County of San Francisco, 241 P.2d 1060 (Cal. 1952). The most recent case on point, Kennedy v. City and County of Denver, 506 P.2d 764 (Colo. App. 1972), held that the rule of absolute liability does not extend to situations where a municipality maintains and operates a zoo for the benefit of the public and in response to the public's obvious desires. The wild animal rule has been held inapplicable in the context of today's society and present zoological techniques, as it would be unrealistic to hold that operation of a municipal zoo exposes the public to inordinate risk. City and County of Denver v. Kennedy, 476 P.2d 762 (Colo. App. 1970).

However, that line of cases has been applied only to zoos which are owned by municipalities. There are no city-owned zoos in Alaska; the Alaska Zoo is owned and operated by a nonprofit organization for the benefit of the public.

The purpose of this legislation is to hold the Alaska Zoo, and other zoos which may be established in Alaska by government entities or nonprofit organizations, to a standard of reasonable care, rather than to the theory of absolute liability. I believe that it is reasonable to hold zoos operated by nonprofit organizations to the same standard of care to which a government-operated zoo would be held by the common law.

I would appreciate the committee's consideration of this bill at its earliest convenience. Should you need any additional information, please let me know.

Thank you.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 89
PUBLISH DATE: 1/20/89

FISCAL NOTE

REQUEST: _____

REVISION DATE: _____
TITLE: Civil liability of zoos
and zoo operators

AGENCY: Alaska Court System
BRU: Trial Courts

SPONSOR: Faiks
REQUESTOR: Senate Judiciary Cmte

COMPONENTS: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
OPERATING						
PERS. SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND/BUILD.						
GRANTS/CLAIMS						
MISCELLANEOUS						
TOTAL	0	0	0	0	0	0
CAPITAL						
REVENUE						

FUNDING: (THOUSANDS OF DOLLARS)

GENERAL FUNDS	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS:

PREPARED BY: Janice C. Lusk
Senator Jan Faiks, Chairman
Senate Judiciary Committee

DATE: 1/19/89

PHONE NO.: 465-4523

S B

g z

SB 93 SUMMARY

SB93 is a Governor's bill that expands Workers compensation to members of the Alaska State Guard, also known as the Alaska State Defense Force. The State Defense Force trains one weekend a month with the National Guard for the purpose of supplementing the National Guard in the event of emergencies, and providing an organizational structure to replace the National Guard in the event that the Guard is called to federal service in wartime.

Members of the State Defense Force are volunteers, and currently have no remedy for recovery of lost wages or medical expenses if they are injured while doing their monthly training. This bill would include them in the state worker's compensation coverage to provide for this coverage.

The bill also protects the state by limiting the benefit paid for any damages to the workers compensation remedy, instead of leaving the door open for a tort claim against the state. This is one of the basic reasons for having workers compensation laws.

Since the training of the Alaska State Defense Force members takes place in an office setting, the rates to provide coverage for them are the same as office workers, or very low. The total fiscal impact of this bill is \$2,400.

The bill before the Committee is a Senate Finance Committee Substitute. The Senate Finance CS removed a provision in the original bill which would have provided additional "safety net" coverage of state workers compensation for members of the Alaska National Guard. The fiscal impact of this section was projected to grow to \$250,000 over the next five years. This section was removed with the department's concurrence due to the fiscal impact, and the department will be reevaluating this need during the interim. This bill passed the House last year as HB 529, and died on the Senate floor on the last day of session.

Prepared by: Jeff Morrison, DMVA 465-4600

FISCAL NOTE

REQUEST:

Revision Date: March 24, 1989
Title: An Act relating to workers comp benefits for members of the org militia
Sponsor: Rules Committee (Governor)
Requestor: Senate Finance

Agency Affected: Military & Veterans Affairs
BRU: Alaska National Guard
Components: Office of the Adjutant General

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		2.4	3.1	4.0	5.3	6.8
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		2.4	3.1	4.0	5.3	6.8

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		2.4	3.1	4.0	5.3	6.8
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Amounts budgeted by this fiscal note will be transferred by RSA to the Division of Risk Management to pay for additional insurance coverage created by this bill. See attached analysis.

Prepared by: Jeff Morrison Phone: 465-4600
Division: Administrative & Support Services, DMVA Date: 3/24/89
Approved by Commissioner: MG John Schaeffer Date: 3/24/89
Agency: Department of Military & Veterans Affairs

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

Attachment to fiscal note for "An Act relating to worker's compensation benefits for members of the state's organized militia, and providing for an effective date."

This act expands workers compensation coverage to members of the Alaska State Militia (State Defense Force). Premiums for workers compensation coverage are calculated by multiplying the total payroll covered by the specific rate for the type of work being performed. Members of the ASM serve without pay for their training, which consists of two days per month, for a total of 24 days per year. Under the bill, the earnings of a member of the ASM are presumed to be the same as they would be if the ASM member held the same grade or rank as a member of the U.S. Armed Forces. Under this assumption, the total covered payroll of the ASM amounts to about \$10,000 per day. For the 24 days of drill per year, the total payroll covered is about \$240,000. During drills, members of the ASM train in an office setting. The rate for workers compensation for office workers is approximately 1% of the total payroll. At an assumed total payroll of \$240,000, and a premium rate of 1%, the total annual premium due to the Division of Risk Management is \$2,400.

FY91 and beyond: Recent workers compensation loss history documented by the Division of Risk Management shows a growth rate in risk management costs of about 30% per year. This growth rate is applied to the total first year expense of \$2,400, to project the likely cost of this legislation for the years following FY90.

Prepared by: Jeff Morrison, Director
Administrative and Support Services Division
Department of Military and Veterans Affairs
465-4600

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
 Title: An Act relating to workers' compensation benefits for member of ASM BRU: Division of Risk Management
 Sponsor: Rules Committee Components: _____
 Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The fiscal impact is difficult to project given that it will only affect future claims of a small number of employees. The Division of Risk Management would increase cost of insurance allocations to the Department of Military and Veterans Affairs by \$2.4 in FY 90. However, since this additional exposure represents only a very small portion of total State exposures, it is unlikely that total cost of risk to the State would be immediately affected.

Prepared By: Don Hitchcock, Director *Don Hitchcock* Phone: 465- 2180
 Division: Risk Management Date: 4/7/89
 Approved by Commissioner: John M. Andrews *John M. Andrews* Date: 4/10/89
 Agency: Department of Administration

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

RECEIVED
 APR 11 1989

STATE OF ALAS 1
1989 LEGISLATIVE SESSION

BILL VERSIG CSSB 93 (Fin)
PUBLISH DATE: 4/7/89

(c)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Labor
 Title: "An Act relating to workers' compensation benefits for state's militia..." BRU: Workers' Compensation
 Sponsor: Rules Committee Components: _____
 Requestor: Senate Finance Workers' Compensation

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND&STRUCTURES						
GRANTS,CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by Jacquelyn McClintock Phone: 465-2790
 Division: Workers' Compensation Date: 3/24/89

Approved by Commissioner: Jim Sampson Date: 3/24/89
 Agency: Department of Labor

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

S B

9 4

STEVE COWPER
GOVERNOR



94

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 9, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Senator Kelly:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to liability immunity of the state, its employees and agents, and members of the Alaska National Guard.

While training or on duty under federal mandate, the state national guards are performing a United States Government activity. Nevertheless, there have been occasions in which states, rather than the United States, have been exposed to tort liability for injuries or damage resulting from federally mandated guard activities.

In 1981, Congress amended 28 U.S.C. 2671 by adding to the definition of "employees of the government" members of the National Guard while training or on duty under federal order under 32 U.S.C. The effect of this amendment was to clarify that the United States considers the Guard as a federal function during 32 U.S.C. activities and that claims for injuries resulting from such activities could be pursued under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq. In spite of this change in the law, there are rare occasions when the state remedy is preferred by an injured third party, who consequently will file a claim for damages in state court on the basis of state law. This bill will prevent suits of this nature, and assure that persons injured or property damaged as a result of federally mandated and controlled Guard activities will be required to seek damages from the United States Government. Existing worker's compensation coverage of guardsmen will not be affected by this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper
Governor

(b)

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Department of Administration
Title: An act limiting liabilities for BRU: Risk Management
activities of the Alaska National Guard
Sponsor: Rules Committee Components: _____
Requestor: Governor

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
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)

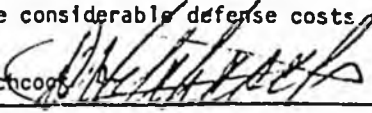
GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

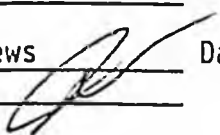
POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The fiscal benefit is difficult to project because State retentions (deductibles) have varied in past years and this legislation applies only to future claims. The Division of Risk Management would reduce costs of insurance allocations to the Department of Military and Veterans Affairs by \$50.0. However, since this exposure represents only a small portion of total State exposures, it is unlikely that total cost of risk to the State would be immediately affected. Certainly passage of this bill might save considerable defense costs should claims occur in the future.

Prepared By: Donald J. Hitchcock  Phone: 465-2180
Division: Risk Management Date: _____

Approved by Commissioner: John M. Andrews  Date: 3/6/89
Agency: Department of Administration

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

FISCAL NOTE

REQUEST:

Revision Date: February 28, 1989
 Title: An Act limiting liability for activities of the Alaska National Guard
 Sponsor: Sen. Judiciary
 Requestor: Sen. Judiciary

Agency Affected: Military & Veterans Affairs
 BRU: Alaska National Guard
 Components: Office of the Adjutant General

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)

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

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

FUNDING: (Thousands of Dollars)

GENERAL FUND		(50.0)	(50.0)	(50.0)	(50.0)	(50.0)
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Passage of this bill will reduce the civil liability exposure of the State of Alaska. This reduction in exposure will be reflected by a reduction in the insurance costs charged to DMVA by the Division of Risk Management.

Prepared by: Jeff Morrison Phone: 465-4600
 Division: Administrative & Support Services, DMVA Date: February 28, 1989
 Approved by Commissioner: for MG John Schaeffer Date: February 28, 1989
 Agency: Department of Military & Veterans Affairs

Distribution (by preparer):

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

SB

101



Representative Dave Donley, Chair House Labor & Commerce Committee

DATE: 4-20-89

PLACE: CA17

SUBJECT OF MEETING:
 SB 82 SB101
 SJR 30 HB 284 HB 166
 HB 278

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT WHICH BILL?
PAULA TERRELL	SENATOR KERTOLA					(Y) N	
ROSE PETERSON	G/COVE	211 FOURTH ST. #101	99801		6-1736	(N) (N)	SJR 30
Doree Gray	Son. Kelly			3822		Y N	SB 101
Guy Warren	JAW DOUGLAS OFFICIAL ASSN	4362 TAKUBLUD JUNEAU	99801		9-3852	(Y) N	SB 107
KATE GRAHAM	UNITED FISHERMEN OF ALASKA	211 4TH ST. SUITE 106 JUNEAU	99801		6-2820	IF NEEDED Y N	SB 82 HB 166
Dennis Mestas	Alaska Academy of Trial Lawyers	880 (N) St. Suite 202	99501	277-4	277-4551	(Y) N	HB 166
Beta Kertola	Atty Gen	Juneau				Y (N)	HB 166
						Y N	
						Y N	
						Y N	
						Y N	

166
 166
 166

SB 101

Dealing With: CIVIL LIABILITY FOR SPORTS OFFICIALS

Sponsors: KELLY

Cost: 0

Supporters/ Opponents:

National Association of Sports Officials Anchorage Sports Association
Amateur Softball Association
Anchorage Softball Umpires Association
Anchorage Baseball Officials Association

Description:

MAKES a Sports official not liable for civil damages in officiating an amateur athletic contest.

— Provided that The official Does not receive more than \$5000 Dollars in a 12 month period from officiating.

Does not apply to gross negligence or reckless or intentional misconduct.

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 30, 1989

FURTHER REFERRALS: JUDICIARY

Date of Committee Action: 4-20-89

The LABOR & COMMERCE Committee considered:

CSSB 101(JUD)

CS FOR SENATE BILL NO. 101 (Judiciary)

[LIMITING LIABILITY OF SPORTS OFFICIALS]

"An Act relating to civil liability for sports officiating; and providing for an effective date."

RECOMMENDATIONS:

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

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):
(Dept)

APPROVES PREVIOUS:

(Date/Dept)

- [] fiscal impact _____
[] zero fiscal note _____
[] zero with analysis _____

- [] fiscal note(s) _____
[] zero fiscal note(s) _____
[] zero fn/analysis _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		X	
<u>[Signature]</u>		X	
<u>[Signature]</u>			✓

[Signature]

Chairman's Signature

OFFICE OF THE PRESIDENT

MEMBER

TENTH ALASKA LEGISLATURE
ELEVENTH ALASKA LEGISLATURE
TWELFTH ALASKA LEGISLATURE
THIRTEENTH ALASKA LEGISLATURE
FOURTEENTH ALASKA LEGISLATURE
FIFTEENTH ALASKA LEGISLATURE
SIXTEENTH ALASKA LEGISLATURE



SENATOR TIM KELLY

P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3822

P.O. BOX 210001
ANCHORAGE, ALASKA 99521
(907) 561-7612

April 6, 1989

Representative Dave Donley, Chair
Labor & Commerce Committee
Alaska State House
Box V
Juneau, Alaska 99811

Re: Scheduling SB 101, limiting civil liability of sports
officials.

Dear Representative Donley,

I would appreciate a committee hearing on SB 101 at your earliest convenience. Nationwide there is a growing recognition of the value and necessity of this kind of legislation (see attachment). This summer I was asked by several Alaskan sports official groups to introduce SB 101.

In the last several years the legislature has passed similar legislation offering protections from civil liability to a variety of volunteer and paraprofessional groups. Search and rescue and ski patrol groups most recently come to mind. In every case it is the recognition that the value and public service of certain activities would be irreparably harmed if exposed to the full effect of liability and the counter balancing cost of insurance.

Also attached are letters I have recieved supporting SB 101 during it course through the Senate.

Thank you for your consideration.

~~Sincerely,~~

A handwritten signature in cursive script that reads "Tim".

TIM KELLY
Alaska State Senator



NATIONAL ASSOCIATION
OF SPORTS OFFICIALS

SPECIAL NEWS RELEASE • SPECIAL NEWS R

FOR RELEASE: July 23, 1987

FOR INFORMATION: Barry Mano (415) 692-9100 San Francisco or
(414) 632-5448 Wisconsin
Mel Narol (415) 692-9100 San Francisco or
(609) 452-0808 New Jersey

NATIONAL ASSOCIATION SPEARHEADS
LEGISLATIVE EFFORTS FOR SPORTS OFFICIALS

SAN FRANCISCO, CA.

The launching of a national legislative effort to protect sports officials from physical abuse and civil lawsuits will be an important focus of the 7th annual National Convention of Sports Officiating.

Sponsored by the National Association of Sports Officials, this annual event will convene today at the Marriott Hotel at San Francisco International Airport.

With the increased visibility and economic stake in sports, greater attention has been focused on the referees and umpires who work the games. No longer are verbal jabs the only recourse being used by disgruntled players, coaches and fans.

Some examples:

* Last year a parent came out of the stands during a Little League game in Huntington Beach, CA., and attacked a

Phy
ABUSP

17-year old umpire. The attacker was fined \$500 and ordered to write an essay on sportsmanship.

* In 1982, an ice hockey referee was attacked by players and fans on his way from the ice to the dressing room in a Fairfax, VA., arena. He underwent two spinal operations and was totally incapacitated for one year. There was a substantial monetary settlement.

* Last year, a softball umpire was attacked by players with bats in Long Beach, CA., resulting in him nearly losing his eyesight in one eye and suffering serious other injuries. The two attackers were sentenced to jail.

During the past five years, the men and women who participate in the avocation of sports officiating, have begun to fight back. "As officials we must let the players, fans, coaches and parents know we will no longer tolerate physical abuse," stated Barry Mano, founder and President of the 13,000 member National Association of Sports Officials (NASO). And the officials, through the education and awareness campaigns by NASO, have been very successful convincing judges in court that physical abuse cannot be part of sports at any level.

The leading authority on sports officials and the law continues to be New Jersey attorney, Mel Narol. Narol, past Chairman and current NASO board member comments: "Criminal court penalties have increased. Last year in California two men were sentenced to six months and one year respectively for their part in a vicious attack on a softball umpire."

Phy
AB/USP

Now NASO has drafted Model Legislation which makes it a criminal offense, greater than merely assault, to physically abuse a sports official. This was made public to the more than 500 attendees at the NASO convention and will be sent to all state legislatures for use in statute writing. NASO plans to lend its expertise and support in fostering this type of protection for officials in every state.

Already in 1987 NASO worked in coordination with legislators in Arkansas to assist passage of such a bill. Arkansas Governor Clinton signed the measure in April.

The other state which has adopted similar legislation is Oklahoma. Its 1978 law makes it a felony to assault a sports official. This is punishable by a fine of up to \$1,000 and/or six months in jail.

NASO also made public today Model Legislation which would make it more difficult to sue sports officials. It would only permit such lawsuits to be successful if the official intentionally injured a person or acted in a "grossly negligent manner."

"Currently most states give limited liability to coaches, athletic directors, public institutions and municipalities," emphasized Narol. "We are seeking parity for officials and umpires."

Liability lawsuits have greatly increased during the past five years. Examples of lawsuits now pending or recently concluded:

* Two New York umpires have been sued for their alleged failure to timely stop a Connie Mack League baseball

Why
ABUSE

Protection
of
Civil
Lawsuits

game resulting in a player being struck and killed by lightning.

* A New Jersey track referee was sued by a high school trackster who claimed to have been injured on a slippery take-off board while participating in a long-jump competition. A jury found the referee was not responsible.

* A major-college basketball referee was sued because of a disagreement on a call he made near the end of a Big Ten game. The court ruled judges should not review referee's calls and dismissed the case.

* A California umpires' association has been sued by a softball player who claims second base was not properly fastened in the ground resulting in injury to him while sliding.

The Model Legislation should be viewed in the context of the fees received by the more than 350,000 sports officials in the U.S. "Officials at the high school, recreation and lower levels earn just \$15 to \$40 per game," noted Mano.

Officials are also beginning to rethink whether the risks of officiating are still worth it. Aside from the difficult task of game control and decision making, they now have real concern for their safety and the spectre of being hauled into a court of law.

NASO, headquartered in Racine, Wisconsin, plans to continue its ground-breaking work to improve the environment in which officials work today. The convention in San Francisco demonstrates this commitment.

Who of
Suing
Civil



DAVID J. STRIKE INSURANCE
~~Auto-Life-Health-Home and Business~~
2213 EAST TUDOR RD SUITE 54
ANCHORAGE, ALASKA 99507 PHONE (907) 562-2721

February 22, 1969

Senator Jan Faiks
Judiciary Committee
Alaska State Senate
Box V
Juneau, Alaska 99811

Re Senate Bill 101

Dear Senator Faiks:

We need your help!

I am writing to you on behalf of the Anchorage Baseball Officials Association, and fellow referees, umpires and officials throughout this great State of ours.

Sports Officials liability needs to be limited to the point that only if we act in a willful or negligent manner can we be sued.

In most states, Coaches, Athletic Directors, Public Institutions and Municipalities have all been granted limited liability. As sports officials all we are seeking is parity.

Please do all possible to pass this very important piece of legislation.

Best Personal Regards,

David J. Strike

DJS:sjd

Encl (1)

RECEIVED

APR 5 1989

SENATOR TIM KELLY
SENATE PRESIDENT

INTERIOR ALASKA HOCKEY OFFICIALS ASSOCIATION
P.O. Box 74514
Fairbanks, Alaska 99707

March 31, 1989

Senator Tim Kelly
Box V
Juneau, AK 99811

Re: SB 101

Dear Senator Kelly:

On February 28, 1989 I spoke with Dave Gray of your office about Senate Bill 101. This bill proposes that a sports official is not liable for civil damages occurring in an amateur event if the official makes less than \$5000.00 during the previous 12 months. During my conversation with Mr. Gray, I suggested that \$7500.00 would be a good ceiling for earnings as there are individuals within the Interior Alaska Hockey Officials Association who are very close to the \$5000.00 limit while belonging to a national, state, or local organization.

Section 09.65.145(a)(2) does not protect an official doing NCAA Hockey games for the University of Alaska as there is presently no NCAA officials organization for hockey officials in Alaska. This may change in the future, however, the IAHOA strongly urges you to broaden the scope of this subsection. I do not know if this same scenario exists with other NCAA sports in Alaska.

While the IAHOA commends you on the introduction of this bill, it would better serve IAHOA officials, as well as other officials, if the limit was raised to \$7500.00.

Should you have any questions, I can be contacted at 451-2733(w) or 456-6858(h). Thank you for your time.

Sincerely,



Christopher C. Milles
IAHOA President 1988-89

cc: Senator Steve Frank
Senator Bettye Fahrenkamp
Senator Dick Eliason
Senator Pat Rodey
Senator Jan Faiks
Senator Jack Coghill
Senator Jay Kertula

The Honorable Tim Kelly
President Alaska Senate
P.O. Box V, MS 3100
Juneau, Alaska 99811

Date
3/5/89

Dear Senator Kelly:

The Anchorage Softball Umpires Association (ASUA) supports Senate Bill 101 as originally introduced on January 11, 1989. ASUA believes the bill is a positive step toward reducing the opportunity for needless liability claims and lawsuits, while maintaining a high level of responsibility on trained and qualified amateur sports officials.

Passage of the bill into law would likely have the effect of reducing insurance costs to sports officiating associations and individual officials.

The ASUA has an annual membership of approximately one hundred and twenty individuals. Members are required to attend annual umpiring clinics on rules, mechanics and handling of games at all levels of organized softball. In addition, each member must pass a national association sanctioned test before he/she is eligible to umpire in the ASUA.

Such preparation in training and qualifying umpires clearly reduces the opportunity for needless liability claims, yet the threat of such claims remains. Passage of Senate Bill 101 will remove that threat and hold sports officials fully responsible for acts of gross negligence or reckless or intentional misconduct.

The ASUA does not support the Senate Judiciary Committee amendment that removes the benefits of this bill from amateur officials who are compensated in excess of \$5,000.00 annually.

A small percentage of ASUA umpires work multiple sports events. Several work high school basketball, football and volleyball. The multiple sports officials will generally earn between \$5,000.00 and \$7,500.00 per year in officiating fees. Under the Judiciary Committee amendment multiple sports officials will receive limited benefits under the proposed law, unless they limit their participation in officiating.

Alaska, statewide, does not have an abundance of amateur sports officials. The compensation level currently in the bill presents a disincentive to maintaining an adequate number of officials.

The ASUA appreciates you sponsoring Senate Bill 101. Thank you.

Sincerely,

Lorena Christie

President ASUA

AMATEUR SOFTBALL

ASSOCIATION



March 6, 1989

PATRICIA A. LILLIAN
Alaska State Commissioner
2950 Drake Drive
Anchorage, Alaska 99508
(907) 272-7683

The Honorable Tim Kelly
President, Alaska Senate
P.O. Box V, MS 3100
Juneau, AK 99811

Dear Senator Kelly:

This letter is intended to convey the Alaska Amateur Softball Association's support for Senate Bill 101.

The Alaska Association represents a statewide membership of over 14,000 individuals in 20 communities.

Senate Bill 101, as originally drafted, will reduce the opportunity for trivial liability claims and needless lawsuits, thus reducing insurance costs to officiating and amateur sports associations. In addition, the passage of Senate Bill 101 into law will serve as yet another incentive for individuals to enter the arena of sports officiating.

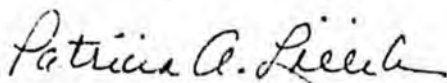
Recent Senate Judiciary Committee action on the bill added language that limits its application to officials that are compensated at an annual level of \$5,000 or less. The Alaska Association does not support such an amendment.

There is no relationship between applying a compensation level and the original intent of the bill, i.e., reduce trivial liability claims, reduce insurance costs, and provide added incentive for individuals to enter the field of amateur sports officiating.

I urge you and your fellow members of the Senate to pass Senate Bill 101 into law minus the compensation level requirement.

Thank you for sponsoring Senate Bill 101.

Sincerely,



Patricia A. Lillian
ASA Commissioner - Alaska

RECEIVED

MAR 6 1989

SENATOR TIM KELLY
SENATE PRESIDENT

March 3, 1989



The Honorable Tim Kelly
President Alaska Senate
P.O. Box V, MS 3100
Juneau, Alaska 99811

Dear Senator Kelly:

The Anchorage Sports Association (ASA) would like to take this opportunity to convey its support for Senate Bill 101.

The ASA represents over 7,500 adults in the organized sports of softball, volleyball and broomball. Active players represented by the ASA are residents of the Municipality of Anchorage.

It is the Board of Directors opinion that passage of SB 101, as originally drafted, would reduce the opportunity for frivolous liability claims and the potential for subsequent law suits. In addition, the provisions of SB 101 would likely reduce the cost of liability insurance for individual officials and officiating associations. Hopefully a portion of such savings can be passed on to ASA members through reduced costs of programs.

ASA does not support recent ammendments to SB 101 that limit liability protection to sports officials who's annual compensation is \$5,000.00 or less. The vast majority of amateur sports officials in Alaska earn less than \$5,000.00 annually. A small percentage of officials who work more than on sport will likely exceed the \$5,000.00 amount.

The net result of applying a compensation level may be that an individual will officiate until the compensation level is reached and then decline to work additional events. Such a situation may tax the sports associations ability to secure the most qualified officials during the latter part of the year. Thus the application of a compensation level appears to have no relationship to the bills intended purpose.

ASA appreciates your efforts in sponsoring SB 101. The Association would appreciate your continued efforts toward it becoming law.

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Rod Hill".

Rod Hill
Executive Director