

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8347 SENATE JUDICIARY - SENATE LABOR & COMMERCE

HJR

50

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO. BJR 50

Revision Date: _____ Dept. Affected: _____
 Title: A Resolution Relating to the North Pacific
Fishery Management Council Comprehensive Rationalization
Plan Component: _____
 Sponsor: Representative Moses
 Requestor: House Fisheries COMPONENT SERIAL NO. _____

(Thousands of Dollars)

Expenditures/Revenues	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
OPERATING EXPENDITURES						
PERSONAL SERVICES	.0					
TRAVEL	.0					
CONTRACTUAL	.0					
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	.0					
TOTAL OPERATING	.0					
CAPITAL EXPENDITURES	.0					
CHANGE IN REVENUES ()	.0					

(Thousands of Dollars)

FUND SOURCE	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other						
TOTAL	.0					

Estimate of any current year (FY94) cost: \$ 0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: Cheryl Sutton, House Fisheries Committee Aide Phone: 465-6848
 Division: Legislative / House Special Committee on Fisheries Date: February 2, 1994
 Approved by Commissioner: *Caul E. Moses* Date: February 2, 1994
 Agency: House of Representatives

PREPARER TO PROVIDE ALL DIS For further distribution in FISCAL NOTE /E OFFICE

Alaska State Legislature

Representative Carl E. Moses

CHAIRMAN
HOUSE RULES COMMITTEE

CHAIRMAN
HOUSE SPECIAL COMMITTEE FISHERIES

MEMBER FINANCE SUBCOMMITTEES ON
DEPT. OF FISH AND GAME
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HOUSE JOINT RESOLUTION 50

North Pacific Fishery Management Council Comprehensive Rationalization Plan

SPONSOR STATEMENT

House Joint Resolution 50 reaffirms the importance of the shore-based processing industry to Alaska and asks the North Pacific Fisheries Management Council to incorporate fairness, equal rights of access and equity to this sector of the commercial fishing industry as it considers its current comprehensive rationalization plan. Under this plan certain allocations of groundfish and crab will be made. HJR 50 simply acknowledges the important role of the shore-based processing industry in consideration of these allocations.

The investment of the shore-based processing industry in Alaska is substantial. Yearly contributions to the state through taxes, payrolls, goods and services, utilities and payments to fish harvesters add social and economic stability to coastal communities in particular.

The Alaska shore-based processing industry must be considered equitably in any actions pursued by the North Pacific Fisheries Management Council.

ADAK • AKUTAN • AMCHITKA • ATK
COLD BAY • DUTCH HARBOR • EGGIK • EKVIC
NELSON LAGOON • NEW STUYAHOK • NIKO
SHEMYA • SQUAW HARBOR • SOUT

COON • CHIGNIK LAKE
OLIGANEK • LEVELOCK • NAKNEK
PORT MOLLER • SAND POINT
UNALASKA • UNGA

SPONSOR STATEMENT

HJR

60



RECEIVED

FEB 14 1994

Ans'd.....

BILL SKAGGS

February 8, 1994

Honorable Ramona Barnes
Speaker of the House
State Capitol Building
Juneau, Alaska 99801

Dear Representative Barnes:

As you know, Missouri's House and Senate passed a concurrent resolution petitioning Congress to propose ratification by the legislators of three-fourths of the state to restrict the Supreme Court or any inferior court of the United States to levy or increase taxes.

Not every state has begun their regular legislative session, but for those of us who have, it's a busy and exciting time.

Twenty-six states have responded to our call to propose a change in our federal constitution which reads:

"Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes."

Federal mandates under the Clean Air Act are just one example of an ongoing and growing squeeze being placed upon the states by the federal government. These mandates have caused fear, anger and resentment among our citizens and our commercial and industrial community. Mandates, dictated by Washington, are putting additional strains on an already tight state budget.

Page 2

To further compound this assault on state revenues the federal district court, with the blessing of the United States Supreme Court, continues to order property tax increases "ad infinitum" to correct what Supreme Court Justice Kennedy rightly referred to as an issue which is properly "part of a legitimate political debate over . . . spending priorities" and not a Constitutional command. In his dissenting opinion to this usurpation of legislative authority by the federal courts Justice Kennedy noted, "This . . . begins a process that over time could threaten the fundamental alteration of the form of government our Constitution embodies."

The Constitution does not allow, nor do we need, judicial intervention requiring tax increases as solutions to potentially serious problems.

You're busy, I know, but in order to be of help to all those working for passage of a concurrent resolution, we are asking you to send us an update of your progress. Just return the enclosed questionnaire at your earliest convenience.

Sincerely,



Bill Skaggs

BS:ya

Enclosure

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

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Mail Stop 3101

FEB 17 1994

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

February 17, 1994

SUBJECT: Amendment to the United States Constitution (8-LS1764)

TO: Representative Al Vezey, Chair
House State Affairs Committee

FROM: Tamara Brandt Cook
Director *TBC*

Here is a draft resolution requesting the United States Congress to propose an amendment to the Constitution to prohibit federal courts from ordering states or political subdivisions to impose or increase taxes. Under Article V of the U.S. Constitution Congress may propose amendments. Additionally, upon application of the legislatures of two thirds of the states, Congress is required to call a convention for the purpose of considering amendments. This latter method has never been used and there is considerable debate about whether a convention may be limited to consideration of only a specific amendment or whether, having called a convention, any amendment may be considered. Because of this uncertainty, I have not in this draft included a request that a convention be called for the limited purpose of considering a specific amendment relating to court ordered taxation.

TBC:pl
94-136.plm

Enclosure

**MEMORANDUM FROM
LEGAL SERVICES**

*Rec'd
2/24/94*

Alaska State Legislature



While in Session:
State Capitol Building
Juneau, Alaska 99801-1182
907-465-3719

Intern:
119 N. Cushman
Suite 211
Fairbanks, Alaska 99701
907-456-5081

Representative Al Vezev

SPONSOR STATEMENT

The purpose of HJR 60 is to petition the Congress of the United States to prepare and present to the legislatures of all the states an amendment to the Constitution of the United States which would prohibit the Supreme Court or any inferior court of the United States from ordering a state or political subdivision of a state to levy or increase taxes.

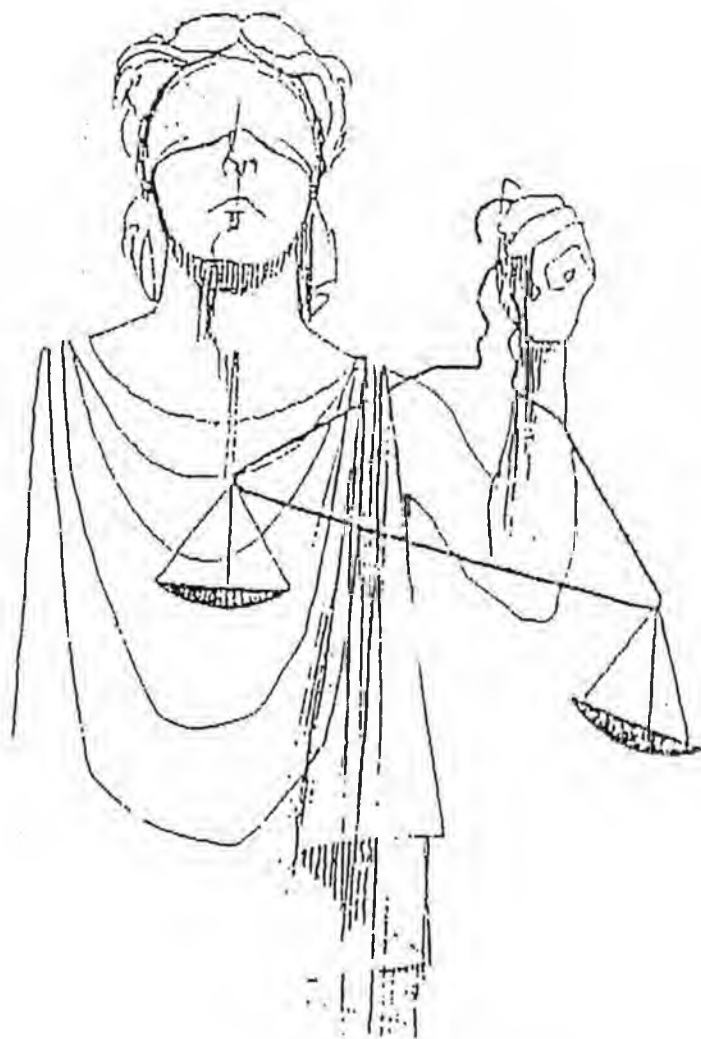
The resolution comes as a request from the office of Representative Bill Skaggs from the state of Missouri. This effort was brought about by a court case Missouri, whereby the Supreme court mandated the city of Kansas City to charge a tax to fund desegregation expenses ordered by the courts.

Presently there are ten states which have introduced a similar resolution.

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The Case For A Constitutional Amendment To Limit The Power To Tax Which Has Been Assumed By The Federal Courts

By John R. Stoeffler



I have read your *The Case For A Constitutional Amendment* and congratulate you on a job well done. It is extremely well documented and very forceful. I wish you well.

As you know, you are taking on a daunting task in trying to educate the people in this matter. The Court, without any authority, has literally taken over a substantial portion of social policy in the nation. It has done this by telling the people that "the Constitution requires it." Felix Frankfurter wrote to President Franklin Roosevelt, "People have been taught to believe that when the Supreme Court speaks it is not they who speak but the Constitution, whereas, of course...it is they who speak and not the Constitution. And I verily believe that that is what the country needs most to understand."

Letter to John R. Stoeffer
From The Honorable Robert T. Donnelly
Chief Justice of Missouri
1973 - 1975 1981 - 1982

wit, there shall be no taxation without representation. In a commentary I penned for the March 5, 1992 edition of the *St. Louis Post Dispatch*, entitled "When Judges Subvert The Constitution", I addressed the abuse of judicial power in the area of court ordered taxation. I pointed out then that, "The framers of the Constitution specifically limited the power to tax and vested such power to lay and collect taxes in the legislature...No exceptions to this view were ever expressed" 17. or, I hasten to add, implied. Earlier I quoted these words of Bishop Hoadly, "(W)hoever hath an absolute authority to interpret any written or spoken laws it is he who is truly the lawgiver." I would suggest to you that whoever controls the purse strings ultimately controls power, the ability of a government to function and the direction it shall go. Alexander Hamilton put it another way in Federalist 79 when he stated, "In the general course of human nature, a power over a man's subsistence amounts to a power over his will." Of the three sources of political power to which I have referred, the power of the purse is the most critical for the power to tax is not only the power to build, but in the wrong hands it can be an instrument of destruction, and the power of total control.

When did the federal judiciary take upon itself the power tax? In November 1982, Missouri voters approved a referendum (Proposition C) which directed local school officials to reduce their operating levies by an amount equal to fifty percent of the revenues local school districts would receive under a one-cent increase in the state sales tax. 18. On July 5, 1983 the federal district court enjoined the voter approved roll back of real estate taxes. (*Liddell v Board of Educ.*, supra, 567F. Supp at 1056) and directed the Board of Education to use this money to fund the quality education programs necessary to restore the St. Louis schools to their AAA status. The U.S. Court of Appeals for the Eighth District sustained the district court's injunction of the roll back on what it termed "Equitable grounds". The court claimed that it had "broad equitable powers to remedy...evils...(including) a narrowly defined power to order increases in local tax levies on real estate." 19. (emphasis mine) In a dissenting opinion Judge John R. Gibson noted that, "The Court need not and should not go this far. The taxing power of the states is primarily vested in their legislatures, deriving their authority from the people." 20. Judge Bowman concurred with Judge Gibson's opinion and stated, "I join in Judge John R. Gibson's well-reasoned dissent....and the singular inappropriateness in our Constitutional system of a federal court's ordering state and local taxing authorities to impose specific tax increases." 21. There are those who choose not to call this example a tax increase, but it

can be called nothing less when citizens are denied monies they voted for themselves. I was taught in school that taxation without representation as practiced in the late 1700s was wrong. The question is, if it was wrong then why is it right today? And, if it is wrong, where are our elected representatives to right this wrong? There is more.

In September of 1987 Judge Russell G. Clark of the District Court entered an order approving extensive Kansas City Missouri School District capital improvement projects and a far-reaching magnet schools plan. In order to fund this order Judge Clark ordered a surtax of 1.5% added to Missouri's State Income Tax for all persons and entities receiving income for work done, services rendered, and income received from activities within the KCMSD and further ordered the tax levy for the KCMSD to be raised from \$2.05 to \$4.00 per \$100 of assessed valuation. 22. On appeal the Eighth Circuit reversed the "Judicially imposed income tax surcharge, holding that the trial court invaded the province of the legislature in ordering this surcharge,(emphasis mine) and that the order (was) beyond the power of the district court as outlined in Specified Supreme Court and Eighth Circuit precedent". 23. On the other hand the Court of Appeals affirmed the District Court's \$1.95 levy increase in effect until the end of the 1991 - 92 fiscal year,... then authorized the Kansas City School Board to obtain from the trial court each year ad infinitum, and without voter approval, a "reasonable" levy (tax) increase over and above the \$1.95 levy (tax) to fund desegregation expenses ordered by the courts." 24. In 1988 The United States Supreme Court upheld the lower federal court's order imposing a property tax increase claiming that the order did, "satisfy equitable and constitutional principles governing the District Court's power." 25. (emphasis mine)

In a dissenting opinion, however, Supreme Court Justice Kennedy stated that, "The premise of the Court's analysis is infirm." He continued, "The question is whether a district court possesses a power to tax under federal law, either directly or **through delegation.**" (emphasis mine) Justice Kennedy points out that, "The description of the judicial power nowhere includes the word 'tax' or anything that resembles it."; 26. but this constitutional fact did not deter the Supreme Court from upholding the lower court's order or "authorization" to increase property taxes in Kansas City, Missouri.

Such power to allocate or reallocate funds by an unaccountable judiciary denies elected officials the necessary tools to properly and responsibly represent and provide for those who have freely elected them. An unelected and unaccountable judiciary, sitting miles from the people affected,

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has no true interest in them, only subjective goals cloaked in robes of Trojan Horse legalese. As Justice Kennedy notes in his dissenting opinion, "Perhaps it is good educational policy to provide a school district with the items included in the KCMSD capital improvement plan...(B)ut these items are part of legitimate political debate over educational and spending priorities, not the Constitution's command of racial equity." 27.

This decision "authorizing" a tax increase represents "the first in which a lower federal court has in fact upheld taxation to fund a remedial decree". 28. As Justice Kennedy noted, "...rules of taxation that override state political strictures not themselves subject to any constitutional infirmity raise serious question of federal authority." This decision, "a first" according to Justice Kennedy, sets a *stare decisis*, or precedent, which will at some time in the future affect all states, and the fact that Congress remains silent on this issue lends credibility to the claim by the courts that they do in fact have the power to tax. In his book, *The Tempting of America*, Judge Robert Bork spelled out his view of the responsibilities of the legislative vis-a-vis the judicial branch of government. He wrote, "Where the law stops, the legislator may move on to create more; but where the law stops, the judge must stop." 29. Here let me add that the only change a court may make is to change the period at the end of the law to an exclamation point!

In a column of October 18, 1993 columnist Charley Reese made this observation about government, " (T)he men who signed the Declaration of Independence and who wrote the Constitution recognized that government--any government--was the potential enemy of individual freedom. They held high the value of governments with limited powers and limited jurisdiction, bound tightly by constitutions, which they viewed as contracts between the people and their governments. (emphasis mine) Today", he continues, "there is virtually zilch talk about freedom or principles of good government. It's all about social and economic issues." 30. Again Justice Kennedy, "This assertion of judicial power is one of the most sensitive of policy areas, that involving taxation, (it) begins a process that over time could threaten fundamental alteration of the form of government our *Constitution embodies*." 31. (emphasis mine) In his farewell remarks to the new nation President George Washington warned, "Let there be no change by usurpation; for through this, in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed". James Madison also noted, "I believe there are more instances of the abridgment of freedom of the people by gradual and silent encroachments of those in power,

than by violent and sudden usurpations." 32. In a recent commentary columnist Thomas Sowell wrote, "History shows many great nations and civilizations declining and falling, but we may be the first to destroy ourselves from within." 33.

In 1982 Judge Robert T. Donnelly addressed the Missouri General Assembly. In his remarks he stated, "History tells us that the Framers (of the Constitution), in establishing a federal government, were influenced by the teachings of Locke, Rousseau, and others, and by the social concept they espoused. This concept would recognize a continuing right in the people to call their agents, even the United States Supreme Court, to account. It would assure that the people, and not an agency of government, will determine the direction of their lives. If, in fact, the United States Supreme Court is exercising powers without the consent of the governed - the people - then the rights it purports to secure in their name are counterfeit - its benevolence a fraud." 34.

Again let me pose the question. Where were our elected officials while all this was taking place? Where are they today? Do they even have an opinion? In May of 1992 I traveled to Washington and visited with a number of members of Congress, among them Congressman Henry Hyde (R-IL). In his office I discussed my concern; his response, "While I'm sympathetic to your concern, on this issue frankly Congress just doesn't give a damn." Today we have a Congress that won't balance the budget, a Congress in which many members were unable or unwilling to balance their own personal checkbooks until their irresponsible and culpable behavior was exposed and a Congress which has shown a willingness to turn over to an un-elected judiciary the most sacred of trusts, the authority to tax. So who is to rein in the judiciary if not the legislative branch of government? The people? Think again!

Today the American people are under the illusion that they are being constitutionally governed, without even understanding what that means. Sure, they and members of Congress will tell you that they have read the Constitution, but without knowledge of prior intent they will never understand its true meaning. "Government", writes columnist Walter Williams, "is about coercion. Limiting government is the single most important instrument for guaranteeing liberty. We're working on the third generation which has had little in the way of education about what our Constitution means and why it was written. Thus, they fall easy prey to charlatans, quacks and hustlers." 35.

In 1982 Judge Donnelly attempted to persuade the General Assembly to petition Congress to rein in the federal judiciary. His admonishment to do so fell upon deaf ears; but as time passes we all see things in a different light.

2

In 1993 the Missouri General Assembly passed a resolution calling upon Congress to submit to the states an amendment to the Constitution which would curb the taxing powers of the judiciary. It reads, "Neither the Supreme Court nor any inferior court of the United States shall have the power to instruct or order a state or political subdivision thereof, or an official of such state or political subdivision, to levy or increase taxes."

36. Credit for the success in passing this resolution is due primarily to the tireless and persistent efforts of State Senator Walt Mueller (R-Kirkwood) and those of Representative Bill Skaggs (D-Kansas City).

Gordon Crovitz, writing in *The Wall Street Journal* noted, "No legal principal carves illegitimate ruling in stone." 37. If this be true, as I believe it to be, then no unconstitutional ruling, opinion or declaration can be wrapped in robes of declared constitutional legitimacy and become the law of the land unless the misinformed, uninformed or those who know better do not act to stop it. Inasmuch as Congress chooses to ignore the unconstitutional actions of the Court, I believe it is now up to the state legislatures to call the Supreme Court of The United States to account by calling for an amendment to the United States Constitution which will rein in the federal judiciary's usurpation of the taxing powers which belong to the people alone through their elected representatives.

In November of 1993 Senator Mueller asked me to chair a group we call The Madison Forum. In that capacity Senator Mueller, Representative Skaggs and I have contacted the majority and minority leaders in both the upper and lower chambers of every state legislature seeking support for passage in their state of a resolution identical to the one which was passed by the Missouri General Assembly in 1993. But the passing of this resolution in Missouri is just a first step on what will be a long and arduous journey. When the legislatures of thirty three additional states pass this resolution it will assume the form of a petition to Congress. Congress will then be forced to submit to the states for consideration an amendment to the United States Constitution which will curb the power to tax which the judiciary has assumed.

It has been said that Benjamin Franklin, coming out of the constitutional convention, was approached by a woman who asked him, "What kind of government have you given us?" His reply, "A Republic, madam, if you can keep it."

Senator Mueller, Representative Skaggs and I and others who feel as we do will continue to work to see that the federal judiciary and the Supreme

Court are brought to account for their unconstitutional actions. It is our intention to insure that this government will remain the Republic to which Benjamin Franklin referred. A Republic for which thousands have given their last great measure of personal sacrifice. A Republic in which those inseparable twins, liberty and freedom will not, like sand, slip through our fingers.

We intend to share with others these self evident truths which the founding fathers embraced knowing full well this is the only way to insure that this Republic will remain a government of the people, by the people and for the people. So help us God.

END

John R. Stoeffler - Chairman
The Madison Forum
347 Labonne Parkway
Manchester, MO 63021

FOOTNOTES

1. Alexander M. Bickel, The Least Dangerous Branch, Yale University Press (2nd Edition), Pg 92 - 93
2. Chief Justice Robert T. Donnelly, The State of The Judiciary in Missouri, 1982 Journal of The Senate, pg 82
3. Robert Bork quoting Bishop Hoadly in The Tempting of America, The Free Press, pg 176
4. Baldwin v Missouri, 281 U.S. 586.595 (1930) (J. Holmes dissenting opinion)
5. Cited in The Tempting of America, Robert H. Bork, The Free Press, pg 151
6. Congressman Robert K. Dornan and Csaba Vedlik, Jr., Judicial Supremacy: The Supreme Court On Trial, Nordland Series In Contemporary American Social Problems, 1980, pg 85
7. Cooper v Aaron, (358 U.S. 1) 78 S. Ct. 1401, pg 1410
8. Cited in Haines, Judicial Supremacy, pg 333, and Corwin, Court Over Constitution, pg 71
9. Joseph Sobran writing in The Conservative Chronicle, 11-11-92, pg 17

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10. Benjamin N. Cardozo, The Nature of The Judicial Process, (New Haven: Yale University Press, 1921) pg 10
 11. Judge Arthur Stanley Jr., Quoted in The Kansas City Star, 3-1-92, pg B-2
 12. Gitlow v The People of New York, (268 U.S. 652) 45 S. Ct., pg 630
 13. Cited in Haines, Judicial Supremacy, pg 333, and Edwin S. Corwin, Court Over Constitution pg 71
 14. Judge Hatter Citing Pruitt v Chaney, 963 F 2d at 1166 - 67
 15. Orloff v Willoughby, (345 U.S. 83) 73 S. Ct., pg 540
 16. Chappel v Wallace, (462 U.S. 296) 103 S. Ct., pg 2366
 17. John R. Stoeffler, When Judges Subvert The Constitution, St. Louis Post Dispatch, Commentary Page. 3-5-92
 18. Mo. Rev. Stat. 164.013 (Supp. 1983)
 19. 731 Federal Reporter 2d Series, pg 1320
 20. *ibid*, pg 1332
 21. *ibid*, pg 1333
 22. Brief for Amici Curie, State of Missouri v Kalima Jenkins, Court No. 88-1150, June 1989
 23. *ibid*
 24. *ibid*
 25. Missouri v Jenkins, 110 S. Ct. 1651 (1990)
 26. *ibid*
 27. *ibid*
 28. *ibid*
 29. Robert H. Bork, The Tempting Of America, The Free Press, pg 151

30. Charley Reese writing in The Conservative Chronicle, 11-3-93, pg 18
31. Missouri v Jenkins, 110 S. Ct. 1651, 1990
32. David Robertson, Debates And Other Proceedings Of The Convention Of Virginia, Richmond, 1805, pg 87
33. Thomas Sowell writing in The Conservative Chronicle, 12-15-93, pg 21
34. Chief Justice Robert T. Donnelly, The State of The Judiciary In Missouri, 1982 Journal of The Senate, pg 81
35. Walter Williams writing in The Conservative Chronicle, 12-8-93, pg 15
36. House Substitute for Senate Concurrent Resolution NO. 9, Journal of the House, 5-5-93, pg 1846 and House Substitute for Senate Concurrent Resolution No. 9, Final vote 5-10-93. (passed 118 "ayes" to 30 "noes") pg 2091
37. Grodon Crovitz writing in The Wall Street Journal, 7-10-91, pg A-11



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Signature of Camera Operator

10/1/97
Date

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BANKING CODE REVISION

CONFIRMATION - J. CARTER, APUC

CONFIRMATION - P. FUHS, COMMISSIONER,
DEPARTMENT OF COMMERCE AND ECONOMIC
DEVELOPMENT

CONFIRMATIONS, 1993

CONFIRMATION OF COLLECTIVE BARGAINING
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Banking

Code

Revision

**DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT**

DIVISION OF BANKING, SECURITIES AND CORPORATIONS

WALTER J. HICKEL, GOVERNOR

*P.O. BOX 110807
JUNEAU, ALASKA 99811-0807
Banking & Securities (907) 465-2521
Corporation Section (907) 465-2530*

ANCHORAGE
Corporation Information (907) 563-2161

January 13, 1994

To all Legislators and other parties:

Re: Emergency Banking Regulations

Last year, the Legislature enacted a revised Alaska Banking Code. Ch. 26 SLA 1993. As of the effective date of that act, January 1, 1994, the existing banking regulations became obsolete. New regulations were drafted in consultation with the affected financial institutions, noticed for hearing, and submitted to the Attorney General's Office in August for final review and adoption. At that time, however, it was discovered that the authority to adopt the new regulations is contained in the new Code, which did not take effect until January 1. Thus, final adoption and Attorney General's review, which can take several weeks, could not begin until the new year.

In order to have banking regulations in place now, with the new Code, the Attorney General's Office recommended that we adopt the proposed regulations as emergency regulations. These emergency regulations were adopted and signed by the Lt. Governor on January 10, 1994.

We hope this answers any questions you may have concerning these emergency regulations. If you have any comments or would like to discuss either the content of the regulations or the adoption process, please call Kristi Peel at 465-2521.

Sincerely,



Willis F. Kirkpatrick
Director

WFK/go107.bsc
011294a

NOTICE OF ADOPTION OF EMERGENCY REGULATIONS

As required by AS 44.62.250, notice is given that, under the authority of AS 06.01.020, 06.05.005, 06.15.010, 06.20.340, 06.25.315, 06.30.025, 06.40.180, and 06.45.010, the Department of Commerce and Economic Development, Division of Banking, Securities and Corporations adopted, amended and repealed, on January 10, 1994, emergency regulations in Title 3 of the Alaska Administrative Code, dealing with financial institutions, trust companies, Alaska small loan companies and premium finance companies. These regulations serve to implement, interpret, and make specific Ch. 26 SLA 1993, the Recodification of the Banking Code, AS 06, as follows:

1. 3 AAC 01.010 ADJUDICATORY HEARINGS (a) is amended to be made consistent with new AS 06.01.030. (d) is a new subsection adopted from the FDIC. (g) contains technical changes bringing it closer to the Administrative Procedure Act, AS 44.62.460.
2. 3 AAC 01.020 FACT-FINDING HEARINGS is repealed and reenacted to clarify that hearings are subject to the department's discretion.
3. 3 AAC 01.030 NOTICE OF FACT FINDING ACTION BY THE DEPARTMENT is repealed.
4. 3 AAC 01.905 RECORDS; DISCLOSURE AND LIMITATION ON DISCLOSURE (a)(4) is amended to ensure records relating to a particular person or institution are kept confidential. (b)(1) is repealed. (b)(2) is amended to clarify that it authorizes the release of general information and not specific information. (c) is repealed and (a)(4) is added. (e) is new to authorize a state chartered bank to release a copy of the department's exam to the bank's auditors.
5. 3 AAC 01.910 DEFINITIONS is amended for technical changes.
6. 3 AAC 02.010 RETENTION OR DESTRUCTION OF RECORDS (a) is amended to adjust retention schedule. (b) is new to permit state chartered banks to retain records by microfilm/microfiche.
7. 3 AAC 02.020 REPORTS TO THE DEPARTMENT is new to make specific appropriate forms for bank reports and provides for electronic and fax filings.
8. 3 AAC 02.030 EXAMINATIONS is new to accept an FDIC exam instead of conducting the department's own.
9. 3 AAC 02.110 RESERVES AGAINST DEPOSITS is repealed and readopted to set reserve requirements.
10. 3 AAC 02.112 DISCLOSURE OF ACCOUNT CHARGES is new to make specific posting of notices requirements.
11. 3 AAC 02.115 NOW ACCOUNTS is repealed.

12. 3 AAC 02.120 REPORTING LOANS OVER \$100,000 is repealed and reenacted to require the board to specifically identify each loan over \$100,000.
13. 3 AAC 02.122 LENDING STANDARDS is new to make specific the determination and documentation of a loan.
14. 3 AAC 02.125 LOAN LENDING LIMITS is repealed and reenacted to allow state chartered banks to lend in parity with national banks.
15. 3 AAC 02.130 IMPROVED REAL ESTATE is repealed.
16. 3 AAC 02.135 DEFINITION OF PROPERTY NOT NEEDED FOR BANKING BUSINESS (a) is amended to clarify that the provision applies to OREO. (b) is repealed. (c) is a new rule for personal property, which requires a faster resale than real property.
17. 3 AAC 02.141 ALTERNATIVE MORTGAGE INSTRUMENTS is repealed.
18. 3 AAC 02.145 AUTHORIZED ACTIVITIES FOR DOMESTIC BANK HOLDING COMPANIES (a) and (b) is amended to restrict activities of a domestic Bank Holding Company and its subsidiaries. (c) is amended for a technical change. (d) is repealed.
19. 3 AAC 02.150 PERMIT TO OPERATE A BANK HOLDING COMPANY is amended to provide for a one-time permit for a bank holding company with continued annual financial reports.
20. 3 AAC 02.155 EXTENSION OF CREDIT BY A BANK TO THE BANK'S HOLDING COMPANY OR SUBSIDIARIES OF THE HOLDING COMPANY (a) is amended to cover all holding companies, not just domestic ones. (b) and (c) are repealed and covered in 3 AAC 02.125.
21. 3 AAC 02.160 REQUIREMENTS TO FORM A DOMESTIC BANK HOLDING COMPANY (a) is amended to be consistent with the new Banking Code.
22. 3 AAC 02.165 EXISTING CORPORATION QUALIFYING AS A DOMESTIC BANK HOLDING COMPANY is repealed and covered in 3 AAC 02.150(b).
23. 3 AAC 02.170 CERTIFICATE OF AUTHORITY OF A DOMESTIC BANK HOLDING COMPANY is repealed.
24. 3 AAC 02.175 CHANGE IN CONTROL OF A BANK HOLDING COMPANY (a) is amended to require the department to approve changes in control of a domestic BHC. (b) is amended to require immediate subsequent notice for change in control of an out-of-state BHC.
25. 3 AAC 02.185 BANKING RELATED ACTIVITIES (a) and (b) are amended to be consistent with the new AS 06.05.272. (g) is new to permit state chartered banks to offer a courier service to their customers.
26. 3 AAC 02.190 LETTERS OF CREDIT (a) is amended to relax regulatory control. (c) was deleted.
27. 3 AAC 02.195 BORROWING is amended for technical changes.
28. 3 AAC 02.197 PLEDGE OF ASSETS is new to clarify AS 06.05.260.

29. 3 AAC 02.200 BANK SUBSIDIARIES is new to clarify permissible activities for state chartered bank subsidiaries.
30. 3 AAC 02.205 BANK INVESTMENTS is new and makes specific the new AS 06.05.270 (a) and (b).
31. 3 AAC 02.209 APPLICATION FOR CERTIFICATE OF INCORPORATION is new, splitting the old 3 AAC 02.210 into 2 sections - this new section and the new 02.210.
32. 3 AAC 02.210 APPLICATION FOR CERTIFICATE OF AUTHORITY (a)-(e) are repealed and contained in the preceding section and (f) and (g) have been amended to become (a) and (b).
33. 3 AAC 02.212 SOLICITATION MATERIALS (a) is amended to apply to any stock subscriptions. Minor changes have been made to information that must be disclosed to the department.
34. 3 AAC 02.215 APPLICATION FOR BRANCH OR CHANGE OF LOCATION (b) is amended for technical changes and is added to apply to international branching .
35. 3 AAC 02.217 APPLICATION FOR A MOBILE FACILITY is amended for technical changes.
36. 3 AAC 02.219 OFF-PREMISES CUSTOMER-BANK COMMUNICATION TERMINALS is repealed.
37. 3 AAC 02.310 MERGER (a) is amended to also apply to the situation where an interstate or international bank branches in Alaska through the purchase of an Alaska bank. (b) is amended to remove specific directives relating to internal corporate actions. (c) is deleted and moved to the application section.
38. 3 AAC 02.320 CONSOLIDATION is amended with revisions similar to the preceding section on Mergers.
39. 3 AAC 02.325 CONVERSION is amended with technical changes similar to the preceding section.
40. 3 AAC 02.330 ADOPTION OF CONVERSION, MERGER OR CONSOLIDATION PLANS and 3 AAC 02.340 ARTICLES OF CONVERSION, MERGER OR CONSOLIDATION are repealed.
41. 3 AAC 02.340 ARTICLES OF CONVERSION, MERGER OR CONSOLIDATION are repealed.
42. 3 AAC 02.350 APPLICATION FOR CONVERSION, MERGER, OR CONSOLIDATION is amended for technical changes to make the section apply to interstate and international bank mergers and consolidations.
43. 3 AAC 02.360 DISSENTING SHAREHOLDER RIGHTS is repealed and reenacted to simplify the process and adopt the corporation code process by reference.
44. 3 AAC 02.420 DEBT COLLECTION PRACTICES is repealed.
45. 3 AAC 02.910 DEFINITIONS is amended to simplify the definitions.

These regulations took effect on January 10, 1994. These emergency regulations will expire May 9, 1994 unless made permanent by the Department of Commerce and Economic Development, Division of Banking, Securities and Corporations.

Notice is also given that the Department of Commerce and Economic Development, Division of Banking, Securities and Corporations intends to make these regulations permanent under AS 44.62.260. Notice of these permanent regulatory changes was issued by the department on July 12, 1993, and period for public comment ended on August 20, 1993.

This action is not expected to require an increased appropriation.

Copies of these regulations may be obtained by writing to:

Division of Banking, Securities and Corporations
P.O. Box 110807
Juneau, Alaska 99811-0807.

DATE: 7-17-94
at Juneau, Alaska

Willis F. Kirkpatrick
Director

ADDITIONAL EMERGENCY REGULATIONS NOTICE INFORMATION
AS 44.62.190(d)

1. Adopting agency: Division of Banking, Securities, and Corporations
2. General subject of regulation: Implement, interpret and make specific SLA 1993, Ch. 26, the Recodification of the Banking Code.
3. Citation of regulation: 3 AAC 01.010; 01.020; 01.030; 01.900; 01.910; 02.010; 02.020; 02.030; 02.110; 02.112; 02.115; 02.120; 02.122; 02.125; 02.130; 02.135; 02.141; 02.145; 02.150; 02.155; 02.160; 02.165; 02.170; 02.175; 02.185; 02.190; 02.195; 02.197; 02.200; 02.205; 02.209; 02.210; 02.212; 02.215; 02.217; 02.219; 02.310; 02.320; 02.325; 02.330; 02.340; 02.350; 02.360; 02.420; 02.910.

4. Reason for the proposed action:
 compliance with federal law
 compliance with new, or changed, state statute
 development of program standards
 other:

5. Cost of implementation to the state agency and available funding (in thousands of dollars)

	Initial Year FY	Subsequent Years
Cost	\$ -0-	\$ -0-
General funds	\$ -0-	\$ -0-
Federal funds	\$ -0-	\$ -0-

6. Contact person for the regulations:

Kristi Peel
Administrative Assistant
Division of Banking, Securities,
and Corporations
P.O. Box 110807
Juneau, AK 99811-0807
(907) 465-2521

7. Origin of the proposed action:
 staff of state agency
 federal government
 general public
 petition for regulation change
 other:

8. 

Willis F. Kirkpatrick, Director
Division of Banking, Securities, and Corporations

Date: 1-17-94



Alaska State Legislature
House of Representatives
Office of the Chief Clerk

7.17 pm

State Capitol, Rm 214
Juneau, AK 99801-1182
(907) 465-3725

Official Business

4/27/93

CONCURRENCE

The House has passed CSSB 149(FIN) with the following amendment:

HOUSE CS FOR CS FOR SENATE BILL NO. 149(JUD)

"An Act revising the laws governing financial institutions and relating to trust companies, the Alaska Small Loans Act, and the Premium Financing Act; amending Alaska Rule of Criminal Procedure 17 and Alaska Rule of Civil Procedure 45(b); and providing for an effective date."

and it is transmitted for consideration.

JC Shine

JC Shine, Chief Clerk

Sen. Halford

Sen. Jacko

Sen. Taylor

Sen. Kelly

(prime sponsor)

Sen. _____

(Chair, last committee)

Sen. Pearce, Co-Ch., Finance

Sen. Frank, Co-Ch., Finance

SENATE FINAL PASSAGE ON
JOURNAL PAGE # 1032

FISCAL NOTE: OFFN

Law Office of Jeff Bush
Senate Building
175 S. Franklin St., Ste. 315
Juneau, AK 99801
(907)463-4150
Fax: 463-4122

January 20, 1993

The Honorable Tim Kelly
Senator
Alaska State Senate
State Capitol
Juneau, AK 99801-1182

Dear Senator Kelly,

I am the attorney hired by the Division of Banking, Securities and Corporations to draft the recodification of the Alaska Banking Code. As you probably know, I worked for several years in the Attorney General's Office, generally representing the Departments of Commerce & Economic Development and Revenue. In that capacity, I represented the division in several legal matters and worked closely with Director Kirkpatrick in the various banking issues that faced the division during the 1980's. In 1991 I also served briefly as the state's Regulations Attorney, coordinating the drafting, introduction, and eventual review of legislation on behalf of the Administration.

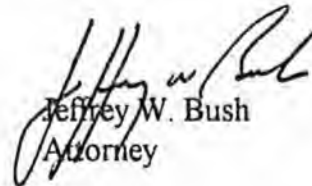
Last session, at the governor's request, the legislature appropriated funds to pay for an outside consultant to work with the division to recodify the banking code, which is woefully out of date. I was awarded this contract. In addition, my contract calls for recodification of Alaska's banking regulations. A first draft of these regulations, which would be adopted in conjunction with the effective date of this legislation, is almost complete.

I understand you are considering sponsoring this legislation. Once you have had an opportunity to look at this package, I believe you will understand the importance of this

proposal. During the drafting process, we have worked closely with the state banks to come up with a bill that is not only acceptable, but worthwhile, to them. In addition, I do not believe there is any reason for the national banks located in Alaska to object in any way to our proposals. In short, this piece of legislation should have few, if any, opponents, and plenty of supporters.

Willis and I would like to meet with you to discuss the specifics of this bill at your earliest convenience; he can be reached at 465-2521, or you can call me at the number above. Thank you for your consideration of this proposal, and I look forward to working with you in an effort to get it passed this session.

Sincerely,



Jeffrey W. Bush
Attorney

enclosure: Jan. 20 Bill Draft & Sectional Analysis

cc: Willis Kirkpatrick

January 20, 1993 Draft

RECODIFICATION OF THE ALASKA BANKING CODE
SECTIONAL ANALYSIS

Section 1. This is current AS 06.05.025 and 06.05.040, mostly with minor technical changes. Recognizing that examiners should not be precluded from merely investing in banks, we have changed the provisions to allow an examiner to own up to 5% of the voting stock of another institution; this will allow simple investments but will not permit an examiner to have a controlling ownership interest in a bank.

Since the department examines all financial institutions, not just banks, the provisions relating to exams have been moved to AS 06.01, the chapter that applies to all financial institutions.

Section 2. Changed to bring the section up to date, given that the list of federal agencies in the current statute is inaccurate. The change will make the statute apply regardless of what changes occur in the future to the names of the federal agencies.

Also, at the banks' request, "corresponding" was removed in (2) to allow the department to equalize competition between financial institutions regardless of what they are called.

Section 3. Current AS 06.05.060(a) and (b). Only change is to clarify that this section applies only to records relating to financial institutions, not all records of DCED.

Section 4. (a) - (c). New cease and desist provisions, to more accurately set out the procedure used by the department; existing law has been confusing. These new subsections are generally taken from the FDIC Act (12 USC 1818(b)(1)) and the Alaska Securities Act (AS 45.55.200(a)), both of which have proven track records.

(d) Current (b), amended to make it clear that public hearings need not be held in cease and desist proceedings.

(e) - (g). Current (c) - (e), without change.

Section 5. This section consolidates all penalty provisions from AS 06 relating to financial institutions. Existing penalty provisions, scattered throughout the code, are repealed in this bill.

(a). The criminal sentences on individuals are generally kept the same as in current law. However, this will raise the potential corporate sentences from the current \$20,000 (\$1000 for trust companies) to \$200,000, under AS 12.55.035(c)(B). This subsection supersedes current AS 06.05.065(e), 06.05.090(c), 06.05.210(b), 06.05.235(d), 06.05.520, AS 06.20.320(b), and AS 06.25.320.

(b). Supersedes current AS 06.40.160(b).

(c). This is consistent with current AS 06.05.380(c), 06.05.500, and AS 06.25.060; current AS 06.05.510 seems to make it only a misdemeanor for the same violations, but a single consistent penalty is more appropriate in all these cases. Supersedes current

AS 06.05.380(c), 06.05.500, 06.05.510, AS 06.25.060, 06.25.070, and AS 06.45.320.

(d). Under the Credit Union Act, this is currently a Class A felony (AS 06.45.330). The general criminal law makes defrauding creditors a misdemeanor for up to \$500, a Class C felony for \$500 to \$25,000, and a Class B felony for more than \$25,000 (AS 11.46.730(c)). We have decided to go with the Class C felony for these cases. Supersedes AS 06.05.490 and AS 06.45.330.

(e) and (f). For intentional violations of the code or the department's orders; taken from Securities Act, AS 45.55.200(b). Note that (e) also applies to people who cause others to violate the code or department orders. A person assessed an administrative penalty would have a right to a hearing under AS 06.01.030. The differential rates for institutions as opposed to individuals is common in other states. See FL and OR below. For point of reference, here is a summary of what some other states allow for administrative fines:

IN allows up to \$15,000 per violation (sec. 28-11-4-9).

GA allows \$1000 per day per violation, until corrected (sec. 7-1-91).

OR allows \$2500 per violation for individuals, \$50,000 for institutions (sec. 708.980).

FL allows \$10,000 per day if the violation is due to recklessness; and \$50,000 per day for individuals and \$500,000 per day for institutions if the violation is intentional (sec. 655.041).

By the way, the FDIC penalties are also very high -- \$25,000 per day for reckless actions, up to \$1 million per day for intentional violations (12 CFR 308.116).

(g). For non-intentional violations, taken from AS 45.55.200(c); also applies to those who cause others to commit a violation.

(h). Supersedes AS 06.01.010(c) and AS 06.05.505. These figures seem consistent with those used in other states. However, for late call reports the FDIC uses a sliding scale based on the size of the institution and whether the conduct is repetitious, charging from \$100 to \$2000 per day (12 CFR 308.132).

(i). Current AS 06.05.065(c).

Section 6. This section lists most of the department's powers with respect to banks. To the extent the list refers to powers contained elsewhere in the code, the reference here is unnecessary, but it does offer a relatively comprehensive laundry list. In addition, (b)(13) and (14) give the department essentially unlimited authority to issue orders to get compliance with the code.

Current AS 06.05.005(3) has been repealed; neither the department nor the banks could determine what it meant or what was its purpose. Some current sections have been repealed elsewhere and included in this section. They are

(a)(2). AS 06.05.070 is repealed, and here it simply states that the department will provide for bank records retention through

regulations.

(b)(1). Current AS 06.05.030, although we have removed the authority of the department to relieve a bank from the examination fee; this seemed appropriate given that fees for specific exams have been replaced with an assessment system. See AS 06.01.010(_).

(b)(6). Current AS 06.05.005(2).

(b)(7). Includes current AS 06.05.015. In (J), we have added authority to require loan loss reserves for loans classified as "doubtful." We also eliminated reference to "FDIC" exams and substituted "federal" exams, to include the Federal Reserve Bank.

Section 7. Amended to make the reporting requirements as to signatures consistent with FDIC requirements, so that the same reports can be used by the banks for both state and federal agencies.

Section 8. Here and in Section 9 of the bill, references to state "charter" have been removed as obsolete. Also, we removed reference to "lending" institutions to make the terminology consistent with that used in the rest of the code.

Section 9. Adds an exemption for mortgage loans existing at the time of hire. This section will no longer disqualify a person from working as a bank examiner if the person has a home mortgage loan with a state bank.

Section 10. Amended to clarify that all actions of the department under this chapter, not just the adoption of regulations, are designed to promote a sound banking system.

Section 11. These changes are primarily stylistic, to clarify the section's meaning.

Section 12. Amended to provide that the notice of charges for new accounts need only be provided where accounts are opened; for example, there is no reason to require this at a bank's automated teller machine (ATM).

We will also clarify in regulation that "clearly post" can include using pamphlets or brochures, provided they are easily accessible and there is some notice or sign indicating their location.

Section 13. The phrase in current statute, "the extent necessary to meet the needs of customers," might be interpreted either to mean "to meet existing orders" or "to meet anticipated demands." This change, proposed by the banks, clarifies the meaning.

Section 14. The repealed language is all contained in other subsections -- the three day maximum closure is now contained in (e); the branch bank variance is now in (f). See Section 16, below.

Section 15. Many stylistic changes. We changed the notice requirement to be before closure, if possible, and otherwise as soon as possible after closure. Also, we removed the requirement that the Comptroller of the Currency be notified of these closures -- that is a matter that should be left to the comptroller and federal regulation. Finally, at the suggestion of First Bank, we clarified the final sentence in the subsection.

Section 16. (d). This is new, to cover the Key Bank "neighborhood day" situation. We will clarify in regulation that "normal business day" applies to any day the bank normally is open for business.

(e). Currently in (a). The three day maximum closure applies not only to holidays, but also to board declared closures, but it does not apply to branch banks operating under a department approved different schedule.

(f). Currently the last sentence in (a).

Sections 17 & 18. At the request of the banks, we have changed this statute to clarify that bank records need not be released pursuant to subpoena. Given that subpoenas can be obtained routinely from the court clerk without judicial review, to permit release of the info in response to a subpoena would amount to an elimination of any customer confidentiality, and has resulted in a huge burden on the banks. Leg. Aff. - This may involve a court rules change. If so, in your opinion, please amend the title and add the appropriate section at the end of the bill.

Section 19. This is new, also at the request of the banks. The current cost of responding to information requests is very high, and it is reasonable to provide the banks with reimbursement for these costs.

Section 20. First, the subsection is modified to apply to all banks -- the distinction of "commercial" banks is meaningless in Alaska law, and there was no reason for the exception for members of the federal reserve system. Second, the subsection has also been changed to provide that reserve requirements will be set by regulation be based on the bank's liquidity needs (rather than as a means of protecting against capital impairment). There has been confusion in the past over the purpose of the reserve requirements. It should be noted that the Comptroller sets reserve requirements in federal law, but those requirements are not based on a bank's liquidity needs, but rather as a method to manipulate the supply of money in the U.S. Finally, we have changed "reserves" to "reserve fund" to avoid confusion with loan loss reserves.

Section 21. This change will give the department more discretion in regulating problem banks. If a bank falls below the reserve requirements, it will not automatically be prohibited from making loans or paying dividends -- that will be up to the department.

Section 22. This adopts the general lending limits used by the Office of the Comptroller of the Currency (OCC). The definition of "fully secured" will be put in regulation, probably requiring collateral equal to 100% of loan balance. The list of transactions not included in these calculations is generally taken from current subsection (b), with an addition in (2) of loans collateralized with assigned deposit accounts. This list is generally more liberal than OCC regulations, except for the requirement that cannery products and products in transit be insured to be exempt.

Section 23. Amended to make loans unconditionally guaranteed by the state, such as AIDEA, also not count toward the loans to one borrower limitations.

Section 24. Expands the prohibition for bank loans to include loans collateralized by stock of any of the bank's holding companies and to unsecured loans used to purchase stock of either the bank or its holding companies. Adds an exception to this rule for situations of bank acquisitions or mergers, with department approval.

Section 25. (g). New provision allowing the department to adopt regulations defining when a loan made in the name of one person or entity will be attributed to another for purposes of calculating the lending limits in this section. This is taken from the recommendations of Montana's advisory committee that reviewed that state's banking code.

(h). New subsection to allow the department to restrict loans of certain classes, based on the type of security (condominium loans, for example). It is not anticipated at this time that this section will be used, but the department needs this authority, particularly if another bank crisis were to arise.

Section 26. (a). Combines existing (a), (c), and (d). Specific loan-to-value (LTV) and term restrictions have been eliminated and replaced with a requirement that real estate loans be made consistent with sound bank policies. Also, the section's application is expanded to apply to all loans where the primary security for the loan is real estate, not just those on improved real estate; thus, current (e) and (f) were eliminated along with AS 06.05.206 and AS 06.05.211. Existing (g) has been eliminated as obsolete.

(b). From current subsection (b); changed to apply to all junior liens, not just seconds.

Section 27. Several changes are proposed to this subsection. First, we clarify that all normal lending restrictions apply to loans to directors, officers and bank employees, in addition to the specific limitations of this section. Second, directors are added to those subject to this section. Third, the threshold for application of the section is raised to \$100,000 in the aggregate, and up to \$250,000 for personal primary residences of directors, officers and employees. We have also repealed the final sentence,

since loans are defined in AS 06.05.540 to include overdrafts, making this sentence unnecessary.

There has been some confusion in the past whether a bank's board of directors could act through a committee for the approval of these loans. AS 10.06.468, incorporated under this act, would allow this, except for loans to directors which would still require full board approval.

Section 28. This section has been amended to remove specific LTV and term restrictions, and make these loans generally subject to the same restrictions as all real estate loans under AS 06.05.207.

Section 29. Changed to make this merely a prohibition; penalties are provided in AS 06.01.035 for all violations of the code, including this section.

Section 30. This section has been confusing and somewhat controversial in the past. We have rewritten it to make sense. The standard adopted here is strongly supported by the banks, because they feel that a simple negligence standard might discourage people from becoming bank directors.

Section 31. This section probably could be repealed, since federal law arguably preempts the state law. (We have repealed AS 06.05.220 for this reason.) However, for clarity, this section is left in. The reference to AS 06.05.220 has been changed to refer directly to the applicable federal statute.

Section 32. The section currently is incorrect in its reference to "real estate," since it actually applies to both real and personal property, so this has been fixed. Also, the section has been broadened in several respects, to allow a bank to hold

1) property used for promotional purposes, such as a boat; of course, any asset so held will have to be used exclusively for bank purposes;

2) a building in which bank offices are located, even if only a portion of the building is used for the bank (this is already being done by several Alaska banks, arguably in violation of present law); and

3) real estate for future expansion, subject to prior department approval.

As for the reference to bank building corporations, these are now covered under the section relating to subsidiaries, AS 06.05.272.

Section 33. Conforming amendment, since provisions relating to out-of-state bank holding companies (BHC's) have been moved to new AS 06.05.521.

Section 34. We have added a permitting system for all bank holding companies that wish to purchase a bank or bank holding company doing business in Alaska.

Section 35. Conforming amendment.

Section 36. New subsection, taken from current 3 AAC 02.910(b). This provides for an exemption to the normal rules applicable to BHC's, and it is more appropriate for the exemption to be in statute, rather than regulation.

Section 37. Technical changes to make it clearly consistent with AS 06.05.205.

Section 38. Technical changes to make the language consistent with AS 06.05.230.

Section 39. There are several proposed changes to this section. The amendments add an exemption from borrowing limits for repurchase agreements; raise borrowing limits without necessary department approval from 100% of capital and 50% of surplus to 15% of assets -- this will be an approximately 50% increase in the limit for most banks (this new standard, 15% of assets, is currently used in the Mutual Savings Bank Act, AS 06.15.180(2)); remove a redundancy regarding borrowings approved by the department; and finally, the adjective "unimpaired" is meaningless and confusing, and is therefore removed.

Section 40. In (2), the change clarifies that when a bank pledges property for a mortgage, the pledged property must be the subject of the purchase transaction. Also adds a new paragraph (3), as suggested by several banks, to permit a bank to pledge assets to a federal reserve bank or a federal home loan bank. This language was taken from WY, sec. 13-3-203. (However, such borrowings will still be subject to limitations of AS 06.05.255.)

Section 41. This is current AS 06.05.485. Leg. Aff.: Is there any chance the issuance of a warranty deed by a bank could be interpreted as falling under this prohibition? If so, we need to clarify that this does not apply to such deeds.

Section 42. This bill repeals the list of specific permissible bank investments in statute. These specific investments, as well as others that may be appropriate, will now be set out in the regulations. This is important, because new investment opportunities seem to come up frequently, and requiring the department to get legislation passed each time has proven burdensome and unpredictable.

Section 43. (a). Adds a provision to permit banks to have subsidiaries, in most cases subject to department approval. The department intends to approve limited underwriting activities, probably on a case-by-case basis. "Subsidiary" is defined in AS 06.05.540 to be corporation more than 50% owned by the bank.

(b). Sets a limit on the amount a bank may invest in subsidiaries, and clarifies that a bank may not use its lending

authority to avoid the investment limits.

(c). Makes it clear that subsidiaries are subject to examination.

Section 44. Clarifies that these are alternative requirements.

Section 45. Prohibits nonbank bank - similar to WY sec. 13-9-302.

Section 46. (a). Makes the Alaska Corporations Code applicable to banks.

(b). Sections of the Corporations Code that are inapplicable to banks are as follows:

AS 10.06.010(4-8). General corporate powers, specifically limited here and elsewhere for banks.

AS 10.06.105(a). Requires a corporation to have "inc.," "ltd." etc. in its name.

AS 10.06.325, 10.06.385 - 10.06.388, & 10.06.420(i). Deal with redemption of shares; This revised banking code sets up specific provisions for stock redemption in AS 06.05.320.

AS 10.06.356. Permits shares to be held by nominees. This is inconsistent with the philosophy behind AS 06.05.450, that all shareholders and the department have a right to know all shareholders of a bank.

AS 10.06.358 - 10.06.360. Dividends; covered by AS 06.05.440 - 06.05.445.

AS 10.06.370. Specifically applies only to regulated investment companies.

AS 10.06.430. Provides that the "books and records of account" of a corporation must be available for inspection by shareholders. To avoid anyone misinterpreting the code to allow a shareholder to see a bank examination, this was excluded.

AS 10.06.453. Provides that the number of directors may be one or more, and if not designated, three. Current banking code (AS 06.05.435) requires at least five directors, and we have retained that in this recodification.

AS 10.06.460(b). Restricts reasons a director may be removed. We have provided for removal of bank directors by the department.

AS 10.06.485. Loans to directors, officers and employees; already covered in AS 06.05.210.

AS 10.06.522 - 10.06.526. Reorganization of corporations in bankruptcy; this is covered for banks under liquidation provisions.

Article 8 (AS 10.06.530 - 10.06.582). Organic change (mergers, etc). These are covered under AS 06.05.462.

Article 9 (AS 10.06.605 - 10.06.678). Dissolution; also covered under liquidation article.

Article 10 (AS 10.06.705 - 10.06.788). Foreign corporations; covered under new article on interstate and international banking.

Article 11 (AS 10.06.805 - 10.06.868). Biennial reports and corporate tax. Banks pay an assessment under AS 06.01.010 and are subject to annual examination and frequent reporting requirements.

AS 10.06.863. Appeal of foreign corporation to Superior Court for revocation of certificate of authority; all appeal processes

for banks will be handled under AS 06.01.

AS 10.06.865 & 10.06.915. Appeal to commissioner for refusal or cancellation of certificate of authority; all appeal processes for banks will be handled under AS 06.01.

AS 10.06.960. Applies only to native corps.

AS 10.06.990(30) & (36). Definitions for "paid in capital" and "retained earnings"; we have provided definitions for all aspects of a bank's capital accounts in AS 06.05.540.

Section 47. (a). Raises minimum capital requirements to \$2 million for banks in Anchorage and Fairbanks, \$1 million for other communities (to allow possible formation of small community banks). However, this clarifies that these are absolute minimums, and that the actual requirements will be set in each case by the department. (At present, all Alaska banks have capital amounts far greater than these minimums.)

(b). To the extent this may be interpreted as inconsistent with AS 06.05.320, we have amended that section to allow stock redemptions if approved by the department. Otherwise, technical amendments only.

(c). Technical amendments only.

Section 48. Present AS 06.05.310 provides for an assessment of shareholders procedure that the department may purportedly order when a bank's capital is impaired. Since this process is essentially unenforceable and, in our experience, unreasonable, this assessment procedure is repealed here and replaced with a simple process for the department to order a bank to increase capital, in whatever manner the bank chooses. This new section is taken from Indiana (sec. 28-13-4-7).

Section 49. Changed to permit bank stock redemptions with departmental approval.

Section 50. Changed to require prior department approval before any significant change in bank ownership or before a change in bank control.

Section 51. Clarified to ensure that all stock sales are subject to this requirement, not just those at the corporate formation stage. Revisor: Please amend section title accordingly.

Section 52. Present AS 06.05.345 is split; new AS 06.05.344 deals with the application for approval process, while AS 06.05.345 retains the provisions relating to articles of incorporation.

(a). Current AS 06.05.345(c). Clarifies that prior approval of director for bank plan is required before articles of incorporation will be issued. Also eliminates requirement for triplicate filing of articles (also changed in (h)).

(b). Current AS 06.05.345(d). The amount that an applicant must submit to the department has been doubled to \$2000; this will

afford the department a bit more protection, assuring a better chance of repayment of its costs. Current amounts charged have been in statute at least since 1978 and need raising. By way of comparison, OR charges a non-refundable \$2500 (sec. 707.070).

(c). Current AS 06.05.345(e).

(d). Current AS 06.05.345(f).

(e). Current AS 06.05.345(g).

(f). Current AS 06.05.345(h). Change to (4) is designed to clarify that the capital requirements are those set by the department. Otherwise, one technical change, and one other change to not duplicate the Corporations Code.

(g). Current AS 06.05.345(i).

(h). Current AS 06.05.345(j).

Section 53. Changed to incorporate the Corporations Code, and then eliminates requirements already covered by that code. Also, (2) is clarified to make sure that no-par stock is not allowed, and (3) is clarified to allow articles to say "5 to 25" directors, instead of giving a specific number.

Section 54. Allows amendment of articles by a majority of shareholders, or more -- this is consistent with the Corporations Code, AS 10.06.504 - 10.06.508. As for filing amendments to articles, these will be done in the manner provided in the Corporations Code.

Section 55. Amended to clarify that certificate of incorporation comes first, certificate of authority later. Incorporation allows a bank corporation to set up a facility and get subscriptions paid in, but not to do any banking business. AS 06.05.395 has been merged with this subsection.

Section 56. (b)(1). This is the same as AS 06.05.380(b); the latter has been repealed. Also, the department does not require a bank to carry a specific amount for undivided profits, so that has been removed.

(b)(4). This is repealed because we will no longer be requiring FDIC insurance in all cases. See Section 58.

Section 57. Current AS 06.05.480.

Section 58. Changed to make FDIC insurance optional, at the department's discretion. This is primarily designed to allow for the formation of small community banks, and to allow other banks to use alternative insurance if it becomes available. REVISOR: Please correct title to this section.

Section 59. Conforming amendment.

Section 60. (a). Most of the requirements of this section that are deleted are covered in the Corporations Code, particularly AS 10.06.223.

(b). Provides that the executive offices of the bank must be designated in the articles or bylaws, and a current copy of the bylaws must be kept on file with the department. We are eliminating any definition of executive or managing officers from the code.

Section 61. These are almost all technical changes, except for (f)(3), which is eliminated because we are eliminating the requirement for FDIC insurance. As for (a), the amounts have been raised for processing an application -- see comments to new AS 06.05.344 in section 52 of the bill.

Section 62. ATM's will no longer be subject to general branching laws; there is no reason that the lengthy application process for a branch should apply to a bank's opening of an ATM.

(a). Permits banks to set up wholly-owned ATM's in bank offices without department approval; these machines may be exclusively for use of the bank's customers.

(b). Permits a bank to establish a wholly-owned ATM outside the bank with prior approval of the department; these machines must be made available to other banks.

(c). Simplified application process for ATM's that are off bank premises, generally taken from Arkansas sec. 23-32-1304.

(d). Permits bank to invest in an ATM corporation (like Options). These operations will not be directly regulated by the department, although the investments themselves will still be subject to safety and soundness considerations upon examination.

Section 63. Repealed language will permit staggered terms for bank directors like that provided in the Corporations Code, AS 10.06.455.

Section 64. Added language will allow the qualifying minimum amount of stock that a director must own to be jointly held, and will allow the department to approve other situations when a director need not meet the minimum ownership requirements, such as where the bank is wholly owned by a bank holding company.

Section 65. (f). From current AS 06.05.437(b).

(g). New, to give department authority to remove or object to certain persons as directors. Taken generally from FL and GA.

Section 66. (a). First repealed sentence is covered by AS 10.06.483(b). Second sentence is amended to allow the board to pick the best possible person for CEO of the bank, even if that person is not on the board; if the bank chooses a non-board member as CEO, that person becomes an ex officio member of the board, to make sure he/she is kept aware of what the board is thinking and doing.

(b). We moved the requirement to report changes in directors to the previous section, which deals specifically with directors.

Section 67. Although the department cannot actually order that an employee of a bank be fired -- that is the sole responsibility of the board -- this subsection will allow the department to essentially recommend an employee's removal, if necessary; if the board refuses, the directors risk personal liability should damages occur thereafter due to the fault of the employee. This change was recommended by the Conference of State Bank Supervisors (CSBS).

Section 68. Minor change to clarify that board meetings are held for many purposes, not just to investigate the affairs of the bank.

Section 69. (e). Allows teleconference board meetings; taken from the Corporations Code, AS 10.06.475(a).

(f). Present AS 06.05.238.

Section 70. Clarifies that dividend distributions are subject to possible restrictions under AS 06.05.307(c).

Section 71. Generally just technical changes; clarifies that requirements of this section are in addition to those in AS 06.05.442.

Section 72. Changed to allow a bank, with department approval, to carry a negative balance in the undivided profits (U.P.) account, and prohibits dividends until this negative U.P. account balance is replaced and the surplus account is fully restored.

Section 73. This section has been combined with AS 06.05.443.

(a). Currently the first part of sec. 443.

(b) (1). Current sec. 443(1) and (2); there was no reason for a one-year provision for judgments, so this was eliminated. This is consistent with departmental powers in AS 06.05.005(b)(8)(K).

(2). Current sec. 445(1); the reference to "debt" is changed to make it clear that this refers to money owed to the bank, not by the bank.

(3). Current sec. 445(2).

(4). Current sec. 443(3).

(5). Current sec. 445(3); under this proposal, stock may also be carried at market value, rather than par.

(6). Current sec. 443(4).

Section 74. Modernized to allow for the maintenance of this record of shareholders in a form other than a book. Also, clarifies that inspection of the record is available for the department, while shareholders will have access to a list of current shareholders. Before each annual meeting, the bank will also need to comply with AS 10.06.413, which requires preparation of a list of shareholders, including names, addresses and numbers of shares owned.

Section 75. Technical amendments only.

Section 76. AS 06.05.466 currently set out a procedure for

dissolution of a bank before issuing a certificate of authority. The proposed revisions to this section retain the same grounds for dissolution in these situations, but permit such a dissolution to be effected as with any other corporation under the Corporations Code.

Section 77. (a). This is generally taken from current AS 06.05.470(a), although it has been expanded to clarify that the department may close and take possession of a bank for violations of the banking laws or orders of the department.

(b) - (c). This clarifies the process for bank takeovers by the department. Under the Supreme Court's decision in Hoffman v. State, ___ P.2d ___, No. 3845 (Alaska May 29, 1992), an opportunity for hearing must be provided to interested parties before a bank may be liquidated by state or federal authorities. Since, as a general rule, it is in the best interest of the public and depositors to minimize the time a bank is closed when it is being liquidated/transferred, the procedure set out in these subsections provides for hearing at the time the department first identifies the bank's problems and confronts the board with them.

(d). This is present AS 06.05.470(d); however, we have reduced the time allowed to request a hearing to two days, to expedite the process and enhance the chances that the bank will be reopened.

Section 78. Repealed language is now contained in sec. 468(c).

Section 79. Clarifies that transfers in anticipation of department takeover for whatever reason, not just due to insolvency, are voidable. New language is taken from current AS 06.05.495, which is repealed.

Section 80.

AS 06.05.472. This section is essentially just a recodification of current AS 06.05.470(f), (j) and (k).

AS 06.05.473. Recodification of current sec. 470(l) - (n). In (a)(1) and (2), the values were raised from \$10,000 to \$100,000, because the FDIC has complained that the lower amount requires frequent, unnecessary court appearances. In (a)(3), also at the request of the FDIC, the provision was changed to allow a receiver to make partial distributions before a final accounting is prepared.

AS 06.05.475. Existing sec. 470(j) - (y), generally with only technical amendments.

(c). Present sec. 470(p) and 465(f), but modified to allow the department to turn over unclaimed property and safe deposit box contents to the Department of Revenue under the Unclaimed Property Act at the conclusion of the liquidation, rather than having to hold the property for five years.

(g). Clarifies that secured claims based on pledged assets under sec. 260 fall behind the general depositor preference.

AS 06.05.477. Current sec. 470(z).

Proposed new AS 06.05.481 through 06.05.521 constitute the new article on interstate and international banking. Article 7 currently deals with (1) prohibited practices and (2) penalties. As for the prohibition sections, AS 06.05.480 was moved to 06.05.350(d) and 06.05.485 to new 06.05.262. AS 06.05.495 is repealed, since it is the same as 06.05.470(g)(2). As for penalties, these sections have all been consolidated in proposed AS 06.01.035. AS 06.05.525, relating to Superior Court injunctions, has been repealed, because the department already has cease and desist powers that are enforceable in court, if necessary.

The new sections on interstate and international banking are loosely inspired by NY, IL and GA law. However, we have tried to think of what is specifically needed and desired in Alaska. REVISOR: Please correct the title to this article.

AS 06.05.481. (a). Authorizes international and insured non-Alaska banks to branch by purchasing existing Alaska institutions. "Interstate," "international," and "recently formed" banks are defined in AS 06.05.540.

(b). Authorizes international banks, but not interstate banks, to de novo branch.

(c). Guarantees that interstate and international bank branches enjoy the same rights as other Alaska financial institutions; taken from NY.

AS 06.05.491. (a). Note the FDIC requirement for non-Alaska US banks; OR has a similar requirement. For international banks, there is provided an in-state asset requirement -- see next section. Much of this is taken from IL and NY.

(b) - (g). Application process for interstate and international banks. These provisions are generally taken from AS 06.05.399, the department's procedure for branch bank applications. Thus, these applications would be handled in the same general manner as other branch applications.

(d). Requires reciprocity for banks from other states, but not for international banks (taken from NY).

AS 06.05.501. (a) and (b). Requires an international bank operating a branch in Alaska to maintain assets in this state sufficient to cover all depositors. This section is taken from OR sec. 713.025.

(c). Provides that if the department takes over one of these branches, the in-state assets will be liquidated under the general liquidation statutes; inspired by IL law.

AS 06.05.511. (a). Essentially same as current AS 06.05.367, which is repealed.

(b). Requires branch to meet general reserve requirements applicable to state banks under AS 06.05.200, but allows appropriate assets held for purposes of the minimum asset requirements of preceding section to be applied to this requirement as well.

(c). Provides that these branches will be subject to normal assessments for exams, but the assessment will be based on the branch's deposits, rather than its assets (since it is impossible

to determine how much of the assets of a multi-state or multi-national bank are attributable to the Alaska branch).

(d). Provides that the parent interstate or international bank may be examined to protect Alaska's interests, in much the same manner as an out-of-state BHC can be examined.

AS 06.05.521. This is presently part of AS 06.05.235.

(a). Currently sec. 235(e). We have added a permitting system for all bank holding companies that wish to purchase a bank or bank holding company doing business in Alaska.

(b). Currently sec. 235(f).

(c). Taken from 3 AAC 02.910(b).

Section 81. Many of these definitions are taken from the existing code. Ones that have been changed, or are new, are

(1). Taken from 3 AAC 910(a)(1).

(3). Several technical corrections.

(4). Changed to take out internal references to "branch" that make the existing definition circuitous, and exempts ATM's from the definition.

(5). All aspects of a bank's capital are defined in this section, to remove the ambiguities that exist in current law. This definition of "capital" is generally taken from IN.

(6). From 3 AAC 02.910(a)(9).

(11). From current AS 06.05.235(h)(1).

(13). From AS 06.01.050(3).

(15). From OR, sec. 711.305 and AS 06.05.305(a).

(16). Loosely adapted from OR, sec. 711.405; (A) and (C) are the two traditional definitions for insolvency - see Annot. 81 ALR 1160.

(17). Defines "international bank" as a bank that is from outside the United States.

(18). Defines "interstate bank" to include any bank chartered in a state other than Alaska and national banks operating outside Alaska.

(19). From IN, sec. 28-1-13-1.2, with some modifications; note that it includes guarantees, overdrafts, letters of credit and loan commitments.

(20). From 3 AAC 02.910(a)(5).

(21). Current AS 06.05.235(h)(2), amended to exclude international bank holding companies from the requirement that they be registered with the federal government.

(22). From WY, sec. 13-1-101(a)(xii).

(23). Current AS 06.05.235(h)(3).

(24). Changed to remove the reference to charters, which no longer exist in Alaska.

(25). In conjunction with new AS 06.05.272, proposed in this bill, this will allow banks to operate subsidiaries that are not directly in the banking business. This definition is taken from the Alaska Corporations Code and is the same as that used by the FDIC.

(26). Current law does not define the essential elements of capital, which has caused some confusion in the past. This bill

simplifies the terminology and makes it consistent throughout, and then all terms used are defined here.

(28) and (29). Define when a bank will be deemed to be in trouble.

Section 82. This has been changed to clarify that the provisions of the banking code apply to trust companies engaged in the business of banking.

Sections 83 and 84. Makes the Corporation Code applicable to banks.

Section 85. Clarifies that the Consumer Protection Act, while exempting transactions regulated under AS 06.05, applies to all other bank transactions, and in particular those between banks and their customers.

Section 86. Repealers:

AS 06.01.010(c). Now covered by AS 06.01.035(h).

AS 06.05.015. Included in new AS 06.05.005(b)(7).

AS 06.05.020. (a). All covered elsewhere in the code.

(b). The first sentence is already covered by AS 06.01.030 (in this bill, subsection (g)). The rest duplicates common law, except for the last sentence, which is a labor law issue and should not be in the code.

AS 06.05.025. All provisions relating to examinations are now in AS 06.01. This section is contained in AS 06.01.015.

AS 06.05.030. Moved to AS 06.05.005(b)(1); see notes to that provision.

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

AS 06.05.055. Some of the info ((1) and (2)) is already essentially done, through the governor's legislative requests, and the rest either is unnecessary for legislators or is public info. This is an expensive annual exercise for the division (estimate is 30 person-days) that is unnecessary.

AS 06.05.060. (a) and (b). Moved to AS 06.01.025, to apply to all financial institutions.

(c). Already covered in AS 09.25.110.

AS 06.05.065. (d) and (e). Included in comprehensive penalties section, AS 06.01.035.

(f). Definition no longer used in the code.

AS 06.05.070. Most of this section is obsolete. We have repealed it and simply provided in AS 06.05.005 that the department will adopt regulations for records retention (which it has already done in current 3 AAC 02.010).

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law. Leg. Aff.: Please verify this and include a confirmation in the sectional analysis. If I am wrong, do not repeal the section.

AS 06.05.090(c). This is included in comprehensive penalties section, AS 06.01.035.

AS 06.05.130. This section is essentially superseded in

substance by the UCC, AS 45.04.406.

AS 06.05.175(c). This is already covered; any violation of the code is subject to discipline and/or enforcement action under AS 06.01.

AS 06.05.185. The sections relating to trust companies (AS 06.05.185 - 06.05.195) are obsolete and are therefore repealed. These provisions are already covered in the trust company act, specifically AS 06.25.085.

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

AS 06.05.200(b) and (c). These are procedural matters that will be put in regulations. Also, the permissible list of deposits will be expanded to include deposits held by the Federal Reserve Bank and the Federal Home Loan Bank, to make the regulations consistent with current practice.

AS 06.05.205. (a). By regulation adopted under AS 06.05.438(c), a requirement will be inserted that when lending reports are made to the board, all loans over a specified amount (higher than \$25,000 - probably \$100,000) will be specifically identified.

(e). Already covered under sound lending practices.

(f). Obsolete.

AS 06.05.206. All special statutory restrictions on real estate loans are repealed in this draft of the code, except those still remaining in AS 06.05.207. Leasehold and development loans are now covered by that section.

AS 06.05.208. This section is covered by AS 45.10.120(c).

AS 06.05.210(b). This is repealed and the substance moved to the comprehensive penalties section, AS 06.01.035.

AS 06.05.220. Already covered by federal law.

AS 06.05.232. The code has been drafted to provide that only a bank's subsidiary can enter into these types of leases. Thus, the section is repealed here, and a broad authority to enter into leases is included in new AS 06.05.272.

AS 06.05.235. (c). Already covered in powers of the department to adopt regulations.

(d). Covered by comprehensive penalties section.

(e) and (f). We have split this section in half, moving the provisions relating to out-of-state bank holding companies to new AS 06.05.521, in the article on interstate banking.

(h). Definitions have been moved to the general definitions section, AS 06.05.540.

AS 06.05.238. This section belongs with the provisions relating to meetings of the board. Thus, it has been moved to AS 06.05.438(f).

AS 06.05.255(c). This subsection was ambiguous and unnecessary.

AS 06.05.260(b). This subsection was probably unenforceable, definitely unclear and ambiguous, and arguably inconsistent with the state's depositor preference.

AS 06.05.270(b). Specific permissible investments for banks have been repealed and will now be set out in regulations. See

comments to bill section 42.

AS 06.05.275. (a). Deleted as unnecessary and obvious.

(c). Deleted as unnecessary. For clarity, if desired, we will put it into regulation.

AS 06.05.280(a) and (b). These are sufficiently handled by market forces, and they are unnecessary.

AS 06.05.300. Covered by AS 10.06.010.

AS 06.05.307. (d). Already covered by AS 06.05.205(b).

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

AS 06.05.330. Covered by AS 10.06.205. However, the Corporation Code provides that there can be only one incorporator, and this will now be allowed for banks as well.

AS 06.05.345. (b). Covered by the Corporations Code.

(c) - (j). Moved to new AS 06.05.344.

(k). Beginning of corporate existence is already covered in the Corporations Code.

AS 06.05.360. Foreign banks are permitted to engage in banking under new article 7.

AS 06.05.367. Most of this section is incorporated into new AS 06.05.511. Paragraph (2) is removed because we are no longer going to require FDIC insurance.

AS 06.05.380. (a) and (b). are the same as 350(b)(1).

(c). This is included in the comprehensive penalties section.

AS 06.05.390. Covered, with minor variations, by AS 10.06.490.

AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).

AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.

AS 06.05.435. (b). Covered by AS 10.06.223.

(e). Covered by AS 10.06.465.

AS 06.05.443. Combined with AS 06.05.445.

AS 06.05.465. Voluntary liquidations will now be covered under the same procedure as involuntary ones, i.e. under the control of the department. See AS 06.05.468(a) in Section 77 of the bill. Of course, if a bank wishes to voluntarily dissolve and there is no reason for the department to get significantly involved, the department can appoint the existing board as receiver.

AS 06.05.470. This section has been split up to make it more manageable. The substance of this section remains essentially unchanged.

(a). Substance moved to sec. 468(a).

(d). Now sec. 468(d).

(f). Now sec. 472(a).

(j) and (k). Now sec. 472(b) and (c).

(l) - (n). Now sec. 473.

(o) - (y). Now sec. 475.

(z). Now sec. 477.

AS 06.05.480. Moved to sec. 350(d).

AS 06.05.485. Moved to new sec. 262.

AS 06.05.490. Included in comprehensive penalties section, AS 06.01.035.

AS 06.05.495. Duplicative; same as sec. 470(g)(2).

AS 06.05.500 - 06.05.520. Covered by comprehensive penalties section.

AS 06.05.525. Covered by AS 06.01.030.

AS 06.05.530. Obsolete.

AS 06.20.320(b). Covered by new comprehensive penalties section, AS 06.01.035.

AS 06.25.060. Covered by comprehensive penalties section.

AS 06.25.070. Also covered by comprehensive penalties section.

AS 06.25.320. Also covered by comprehensive penalties section.

AS 06.30. Repeals state Savings Association Act. Note to Leg. Aff.: Please do a STAIRS search on this repealer to catch and correct any references to this chapter elsewhere in the statutes.

AS 06.40.160(b). Covered by comprehensive penalties section.

AS 06.45.320. Covered by comprehensive penalties section.

AS 06.45.330. Also covered by comprehensive penalties section.

January 20, 1993 Draft

NOTE to Legislative Affairs: Please do a STAIRS search on AS 06.01 to catch any necessary conforming amendments in the rest of the statutes. Thank you.

Normal Title and Heading

For an Act entitled "An Act amending and updating the Alaska Banking Code and the supervisory powers of the Department of Commerce and Economic Development over banks, and providing for an effective date."

* Section 1. AS 06.01 is amended by adding a new section to read:

Sec. 06.01.015. EXAMINATIONS. (a) The department shall select one or more competent persons to make examinations of financial institutions. The examiner shall take and subscribe an oath that the examiner will honestly and impartially examine into and report the condition of the institution as to assets and liabilities and other information as may be required by the department, that the examiner will not disclose the information the examiner obtains through the examination to any person other than the department, that at the time of employment the examiner is not obligated to or the owner of any interest in the institution or an officer or shareholder of the institution and that the examiner does not own more than five percent of the voting shares and is not an officer or employee of any other financial institution in this state.

(b) Irregularities in the conduct of a financial institution's business and any violation of law shall be promptly called to the attention of the directors of the institution by the department. A copy of the report of examination shall be sent to the institution examined.

(c) Financial institutions regulated under this title are subject to at least one examination each year. Additional examinations may be conducted at the discretion of the department.

* Section 2. AS 06.01.020(a) is amended to read:

(a) Notwithstanding other provisions of this title, the department [COMMISSIONER] may by regulation authorize financial institutions, except licensees subject to AS 06.20 or AS 06.40, to exercise any of the powers conferred upon, or to be subject to any of the limitations imposed upon, a [FEDERALLY CHARTERED BANK, TRUST COMPANY, SAVINGS ASSOCIATION, FEDERALLY CHARTERED CREDIT UNION, OR OTHER] federally chartered financial institution doing business in this state with deposits insured by an agency of the federal government [WHICH IS SUBJECT TO THE REGULATIONS OF THE UNITED STATES COMPTROLLER OF THE CURRENCY, THE FEDERAL RESERVE BOARD, THE FEDERAL HOME LOAN BANK BOARD, THE FEDERAL DEPOSIT INSURANCE CORPORATION, THE NATIONAL CREDIT UNION ADMINISTRATOR, OR THE SUCCESSOR OR SUCCESSORS OF THEM], if the department [COMMISSIONER] finds that the exercise of the power or the imposition of the limitation both

(1) serves the public convenience and advantage; and

(2) equalizes and maintains the quality of competition between state [-CHARTERED] financial institutions and [CORRESPONDING] federally chartered financial institutions.

* Section 3. AS 06.01 is amended by adding a new section to read:

Sec. 06.01.025. RECORDS OF DEPARTMENT. (a) Information from the records of the department obtained through the administration of this title may be revealed only with the consent of the department and is not subject to subpoena.

(b) Reports of examinations made by the department shall be retained for five years.

* Section 4. AS 06.01.030 is repealed and reenacted to read:

Sec. 06.01.030. ORDERS AND INJUNCTIONS; NOTICE AND HEARINGS; REGULATIONS. (a) Whenever it appears to the department that a person is engaging, has engaged, or is about to engage in an unsafe or unsound practice in conducting the business of a financial institution, or is violating, has violated, or is about to violate any provision of this title or a regulation adopted or order issued under this title, the department may

(1) issue and serve on the person a notice of intent to issue an order directing the person to cease and desist from continuing the act or practice, or imposing a penalty under AS 06.01.035(e) - (g); or

(2) bring an action in the superior court to enjoin the act or practice.

(b) A notice issued under (a)(1) of this section shall contain a statement of the facts constituting the alleged violation or the unsafe or unsound practice, and shall give reasonable notice of and an opportunity for a hearing to determine whether an order to cease and desist the act or practice should be issued. If no hearing is requested within 30 days, or if the person served or the person's representative fails to appear at the hearing, the person will be deemed to have consented to the issuance of the order. In the event of such consent, or if the department finds at the hearing that a violation or an unsafe or unsound practice has been established, the department may issue the order to cease and desist.

(c) A cease and desist order issued under (b) of this section may impose a penalty under AS 06.01.035(e) - (g), and require the person to cease and desist from the act or practice and to take affirmative action to correct the conditions resulting from the act or practice.

(d) Except for notices issued under (a) of this section, the department shall give public notice . . . **THE REST OF THE SECTION REMAINS UNCHANGED, BEGINNING WITH THE SECOND LINE IN CURRENT (b).**

* Section 5. AS 06.01 is amended by adding a new section to read:

Sec. 06.01.035. PENALTIES. (a) A person who wilfully and knowingly violates, or causes another to violate, a provision of this title, or a regulation or order of the department under this title, for which no specific penalty is provided, is guilty of a Class A misdemeanor.

(b) A person who, without first receiving a license or certificate of authority from the department, participates in any activity that requires a license or certificate of authority under this title, is guilty of a Class A misdemeanor.

(c) A person is guilty of a Class C felony who, with intent to deceive the department,

commissioner or a person authorized to examine the affairs of a financial institution, wilfully and knowingly

- (1) makes or causes to be made a false statement or report;
- (2) enters a false figure, statement, or entry in the books of a financial institution; or
- (3) makes or circulates a false report or statement about the condition of a financial institution.

(d) A director, officer, or employee of a financial institution who receives a deposit, knowing that the institution is insolvent and without the department's prior approval, is guilty of a Class C felony.

(e) In addition to any other penalties applicable under this section, the department may issue an order against a person other than a financial institution who knowingly or intentionally violates, or causes another to violate, a provision of this title, or a regulation or order of the department under this title, imposing a civil penalty of not more than \$2500 a day for a single violation, or not more than \$25,000 a day for multiple violations in a single proceeding or a series of related proceedings.

(f) In addition to any other penalties applicable under this section, the department may issue an order against a financial institution that knowingly or intentionally violates a provision of this title, or a regulation or order of the department under this title, imposing a civil penalty of not more than \$5000 a day for a single violation, or not more than \$50,000 a day for multiple violations in a single proceeding or a series of related proceedings.

(g) For violations not covered by (e) or (f) of this section, and in addition to any other penalties applicable under this section, the department may issue an order against a person, including a financial institution, who violates, or causes another to violate, a provision of this title, or a regulation or order of the department under this title, imposing a civil penalty of not more than \$500 a day for a single violation, or not more than \$5000 a day for multiple violations in a single proceeding or a series of related proceedings.

(h) A financial institution that fails to file a report or make any payments required by the

department within the time specified under this title is subject to a penalty of not more than \$100 a day for each day the report or payment is late. A financial institution is considered to have transmitted a report or payment when the institution has deposited it in a United States post office in the state, properly addressed to the department, postage prepaid.

(i) In addition to any other penalties applicable under this section, an officer or employee of the department who violates AS 06.05.065(a) shall be dismissed and is forever disqualified from holding any position in the department relating to the regulation of financial institutions. A nonexempt employee dismissed under this section may appeal the dismissal under AS 39.25 (the State Personnel Act).

* Section 6. AS 06.05.005 is repealed and reenacted to read:

Sec. 06.05.005. POWERS OF DEPARTMENT. (a) The department shall

(1) exercise general supervision over all state financial institutions, their subsidiaries, and affiliated corporations;

(2) adopt regulations necessary to implement this chapter, including regulations providing for the retention and preservation of bank records;

(3) review and approve or disapprove applications for new state banks under AS 06.05.345, new bank branches under AS 06.05.399, and international or interstate branch banks under AS 06.05.491;

(4) issue permits authorizing bank holding companies to do business in this state under AS 06.05.235 and 06.05.521;

(5) determine, for each state bank, the amount of paid-in capital necessary to operate under AS 06.05.305(a);

(6) review and approve transfers of bank ownership under AS 06.05.327;

(7) perform examinations of state banks, branch banks, and subsidiaries under AS 06.01.010.

(b) The department may

(1) relieve a bank from the examination requirements of AS 06.01.015 if the bank's

deposits are insured by the Federal Deposit Insurance Corp or any agency of the United States that insures bank deposits;

(2) approve operation of a branch bank on a schedule different than normal banking days under AS 06.05.166(f);

(3) approve the operation by a state bank of an automated teller machine at a location other than the bank's premises under AS 06.05.405;

(4) approve certain bank subsidiaries under AS 06.05.272;

(5) approve acceptance by a bank of the bank's stock or that of the bank's holding company as security for a loan in certain circumstances under AS 06.05.205(d);

(6) restrict the withdrawal of deposits from a state bank where the department finds that extraordinary circumstances make restriction necessary for the proper protection of depositors;

(7) require a state bank to

(A) maintain its capital and reserve accounts in amounts determined appropriate by the department, considering the size of the organization;

(B) observe methods and standards which it may adopt for determining the value of various types of assets;

(C) charge off the whole or part of an asset which has not been lawfully acquired;

(D) write down an asset to its market value;

(E) record liens and other interests in property;

(F) obtain a financial statement from a borrower or prospective borrower to the extent that the bank can do so;

(G) obtain insurance against damage to real estate taken as security;

(H) search, or obtain insurance of, the title to real estate taken as security;

(I) maintain adequate insurance against other risks as the department determines necessary and appropriate for the protection of depositors and the public;

(J) charge off that portion of an asset classified as loss, or charge off or reserve

up to 50 percent of loans classified as doubtful, in a state or federal report of examination; or

(K) charge off all debts owed to the bank in which interest is past due and unpaid for a period of six months unless the debt principal is adequately secured and the bank is in the process of collection;

(8) require the board of directors of a bank to hold a meeting under AS 06.05.438(f);

(9) order the removal of any board member of a bank under AS 06.05.435(g);

(10) order the suspension of dividends of a bank under AS 06.05.441(b);

(11) require a bank to increase its capital accounts under AS 06.05.305(c);

(12) take possession of a bank in the manner provided in AS 06.05.468(c), and thereafter operate, reorganize or liquidate the bank under AS 06.05.470 - 10.06.477;

(13) issue any orders under AS 06.01.030(b) that the department determines are necessary to ensure compliance with this chapter and regulations adopted under it; and

(14) exercise any other powers expressly or implicitly granted in this chapter.

* Section 7. AS 06.05.045(a) is amended to read:

(a) Each state bank shall make at least four reports of condition each year to the department on days designated by, and on forms prescribed by, the department. The report shall be signed by a duly authorized officer of the bank and verified [BY AN OATH OF THE PRESIDENT, VICE PRESIDENT, OR CASHIER AND] by at least three directors, certifying [AND SUBSCRIBING UNDER OATH] that they and each of them have personal knowledge of the facts stated in the report and that the facts are true. The reports shall exhibit in detail and under appropriate heads the resources and liabilities of the bank, and must be received by the department within 30 calendar days after the end of the period covered by the report.

* Section 8. AS 06.05.065(a) is amended to read:

(a) A bank examiner of the department who deals with the regulation of financial [LENDING] institutions, a special agent selected by the department to do work relating to financial [LENDING]

institutions, the commissioner or deputy commissioner, or the director of banking may not be an officer, employee, director, trustee, attorney, stockholder, or partner of a **financial** [LENDING] institution, or receive, directly or indirectly, a payment or gratuity from a **financial** [LENDING] institution. A person subject to this section may not borrow money from a **state-certified financial** [CHARTERED LENDING] institution except as provided in this section.

* Section 9. AS 06.05.065(b) is amended to read:

(b) A person subject to this section may

(1) be a depositor in a **financial** [LENDING] institution;

(2) purchase shares of a savings and loan association on the same terms available to the public;

(3) be a member of an employee credit union;

(4) be indebted to a **state-certified financial** [CHARTERED LENDING] institution upon an installment debt **incurred by the employee in the purchase of goods for personal use only**, transferred to the **financial** [LENDING] institution in the regular course of business [BY A SELLER OF GOODS], including **debts for** [BUT NOT LIMITED TO] household goods, mobile homes, motor vehicles, or boats [PURCHASED BY THE EMPLOYEE FOR PERSONAL USE ONLY]; **or**

(5) be indebted to a state-certified financial institution for a mortgage loan secured by the person's primary residence that was closed before the person became an employee subject to this section.

* Section 10. AS 06.05.075 is amended to read:

Sec. 06.05.075. STANDARDS IN REGULATIONS. The department, in the exercise of **its authority** [THE POWER TO ADOPT REGULATIONS] under this chapter, shall act in the interests of promoting and maintaining a sound and competitive banking system, the security of deposits and customers, the preservation of the liquid position of banks and in the interest of preventing injurious credit expansions and contractions.

* Section 11. AS 06.05.100 is amended to read:

Sec. 06.05.100. DEPOSIT OF MINOR OR PERSON UNDER DISABILITY. Where a deposit is made in a bank by or on behalf of a minor or a person under disability in the [DEPOSITOR'S OWN] name of the minor or disabled person, the bank may pay the money on check or order of that person as in other cases.

* Section 12. AS 06.05.120 is amended to read:

Sec. 06.05.120. NOTICE OF CHARGES. A bank or other financial institution that levies a charge for the establishment or maintenance of personal nonbusiness demand deposit accounts shall clearly post a schedule of the charges in each of its places of business where accounts are opened.

* Section 13. AS 06.05.160 is amended to read:

Sec. 06.05.160. TRANSMITTING MONEY AND FOREIGN EXCHANGE. A bank may accept for transmission and transmit money, and may buy and sell foreign exchange to the extent necessary to meet the reasonably anticipated needs of customers.

* Section 14. AS 06.05.166(a) is amended to read:

(a) A bank organized under or doing business under the laws of the state or a national bank may remain closed on the legal holidays described in AS 44.12.010, 44.12.020 and 44.12.025 [, EXCEPT THAT A BANK MAY NOT BE CLOSED FOR MORE THAN THREE CONSECUTIVE DAYS]. The bank shall post a notice of holiday closing in the place of business affected at least 15 days in advance. [A BANK MAY OPERATE A BRANCH BANK ON A DIFFERENT SCHEDULE APPROVED BY THE DEPARTMENT IF OPERATION ON A DIFFERENT SCHEDULE WILL PROVIDE BETTER SERVICE.]

* Section 15. AS 06.05.166(c) is amended to read:

(c) In an emergency, [AS DEFINED BY THE DEPARTMENT,] a bank [, IN THE REASONABLE AND PROPER EXERCISE OF ITS DISCRETION,] may elect [DETERMINE] not to open any of its banking offices on a business or banking day [,] or, [IF] having opened, to close any banking office [DURING THE OCCURRENCE OF AN EMERGENCY]. [IF COMMUNICATION

FACILITIES ARE OPERATIVE, THE] The bank shall notify the department [, OR IN THE CASE OF A NATIONAL BANK THE COMPTROLLER OF THE CURRENCY,] of the nonopening or the closing before taking the action, if possible, and as soon as possible, in any event. Any act relating to the banking office that [HAS NOT BEEN OPENED OR THAT] has been closed for any period of time under this subsection may be performed on the next [SUCCEEDING] business day that the office is open [REOPENED] for business. No liability or loss of rights of any kind on the part of any person, firm, or corporation or of the bank results from the nonopening or closing, and the rights of all parties are suspended during the nonopening or closing.

* Section 16. AS 06.05.166 is amended by adding new subsections to read:

(d) In addition to legal holidays, the board of directors may declare a closure of a bank on any other normal business day, provided the department authorizes the closure, the bank posts notice of the closing in the place of business affected at least 15 days in advance, and the bank maintains all normal processing and clearing operations on the closed day.

(e) Under (a) or (d) of this section, a bank may not be closed for more than three consecutive days.

(f) A bank may operate a branch bank on a different schedule approved by the department if the department determines that operation on a different schedule will provide better service or otherwise benefit the public.

* Section 17. AS 06.05.175(a) is amended to read:

(a) The bank records pertaining to depositors and customers are confidential and may not be made public except

(1) when the bank, customer or depositor is compelled to disclose the contents of the records by a court order,

(2) when their disclosure is required by federal or state law or regulation,

(3) when disclosure is authorized in writing by the depositor or customer,

(4) when disclosure is made to the holder of a negotiable instrument drawn on the bank

as to whether the drawer has sufficient funds in the bank to cover the instrument, or

(5) when an inquiry has been made by a bank, savings association, or savings and loan association regulated under this title, or by a credit-reporting agency regulated under 15 U.S.C. 1681-1681t (Fair Credit Reporting Act), solely for the express purpose of determining the credit worthiness of the depositor or customer as an applicant for credit and the information disclosed by the bank or the entity making the inquiry under this paragraph pertains only to the payment habits of the depositor or customer in connection with loans and other credit accommodations and does not pertain to records concerning deposit balances in savings or checking accounts.

* Section 18. AS 06.05.175(b) is amended to read:

(b) When disclosure of bank records is required or allowed under (a)(1) or (2) of this section, the bank shall notify the depositor or customer of the disclosure. If notification before disclosure is not possible, the bank shall immediately notify the customer or depositor of the disclosure or inquiry. However, notification may not be made if disclosure is made under a search warrant or under a court order [SUBPOENA] issued [BY OR] at the behest of a grand jury.

* Section 19. AS 06.05.175 is amended by adding a new subsection to read:

(d) When disclosure of bank records is compelled by a court order under (a)(1) of this section, the court shall provide in the order for the reimbursement of the bank for the reasonable costs incurred in complying with the order.

* Section 20. AS 06.05.200(a) is amended to read:

(a) A [COMMERCIAL] bank [THAT IS NOT A MEMBER OF THE FEDERAL RESERVE SYSTEM] shall maintain a reserve fund sufficient to maintain liquidity and meet all reasonable demands of depositors, as provided in regulations adopted by the department. [TOTAL RESERVES EQUAL TO THE FOLLOWING PERCENTAGES OF THE AGGREGATE AMOUNT OF ITS DEPOSITS, EXCLUSIVE OF DEPOSITS OF THE UNITED STATES, THE STATE OF ALASKA, BOROUGH AND MUNICIPAL GOVERNMENTS AND OTHER DEPOSITS OF PUBLIC MONEY THAT ARE SECURED AS REQUIRED BY LAW:

- (1) 20 PER CENT OF ITS DEMAND DEPOSITS; AND
- (2) EIGHT PER CENT OF ITS TIME AND SAVINGS DEPOSITS.]

* Section 21. AS 06.05.200(d) is amended to read:

(d) If the reserve fund [RESERVES] of a [COMMERCIAL] bank falls [FALL] below the amount required to be maintained by the department under this section, the department may prohibit the bank from making [MAY NOT MAKE] any new loans or other investments or paying [PAY] any dividends until the bank's [ITS] reserves have been restored to the amount required under this section.

* Section 22. AS 06.05.205(b) is repealed and reenacted to read:

(b) The total outstanding loans of a state bank to a person may not be more than 25 percent, and the total outstanding loans to a person that are not fully secured may not be more than 15 percent, of the total capital accounts of the bank. Unearned income may not be included in determining the amount a bank may loan under this subsection. The following are not considered in determining compliance with the limits of this subsection:

- (1) the discount of bills of exchange drawn in good faith against actual existing values;
- (2) loans secured by gold, gold dust, bullion, the assignment of specifically identified deposit accounts of the bank with a balance equal to or greater than the total balance of the loan, or fully insured cannery products or other produce in transit;
- (3) loans with warehouse receipts as collateral security; and
- (4) the discount of commercial or business paper actually owned by a person negotiating the same.

* Section 23. AS 06.05.205(c) is amended to read:

(c) The restrictions contained in [(a) AND] (b) of this section do not apply to a loan guaranteed by, or to a commitment or agreement to take over or to purchase by, a department, bureau, board, commission, or establishment of the United States or the State of Alaska, including a corporation wholly owned, directly or indirectly, by the United States or the State of Alaska, provided that the guarantee, agreement or commitment is unconditional and shall be performed by payment in cash or

its equivalent within 60 days after demand.

* Section 24. AS 06.05.205(d) is amended to read:

(d) A bank may not accept the [ITS] capital stock of the bank or any of the bank's parent holding companies as security for a loan, nor may a bank loan money that will be used to purchase the capital stock of the bank or any of the bank's parent holding companies, except upon written prior approval of the department in order [UNLESS IT IS NECESSARY] to prevent loss upon an indebtedness previously contracted in good faith or as part of an acquisition or merger with another financial institution.

* Section 25. AS 06.05.205 is amended by adding new subsections to read:

(g) The department shall adopt regulations to determine when a loan made to one person will be attributed to other persons under (b) of this section, taking into consideration the purpose of the loan, the use of the loan proceeds, the anticipated sources of repayment of the loan, the percent of ownership of the borrowers, and any other relevant factors.

(h) The department may adopt regulations classifying loans based upon type of security or collateral and restricting or limiting a bank's authority to make loans to certain classes.

* Section 26. AS 06.05.207 is repealed and reenacted to read:

Sec. 06.05.207. REAL ESTATE LOANS. (a) A bank may, subject to the requirements of this chapter, make or acquire a loan secured primarily by a first lien on an interest in improved or unimproved real estate, including leaseholds, if

(1) the loan is made consistent with written lending policies of the bank and any regulations adopted by the department;

(2) the bank secures, before the loan is made or acquired, and maintains, in its files, evidence of merchantable title and a determination of the value of the property by a person familiar with the real estate values in the vicinity where the real estate is located; and

(3) insurance against loss from fire on all buildings on the real estate that are included in the value of the property is acquired by the borrower or the bank and is not allowed to lapse.

(b) A bank may, subject to the requirements of this chapter, make or acquire a loan secured by a junior lien on real estate if

(1) payments on the loan secured by all senior lien loans are current and the bank retains in its records a written report of the status and balance of the senior lien loans as of the date the junior lien loan is made or acquired; and

(2) all requirements of (a) of this section are met.

* Section 27. AS 06.05.210(a) is amended to read:

(a) Subject to the same terms and conditions applicable to other loans, a director, [AN] officer or employee of a state bank may borrow up to \$100,000, or up to \$250,000 for the director's, officer's, or employee's primary residence, [\$10,000] from the bank at the discretion of the chief executive or managing officer of the bank. Any loan to a director, officer or employee that makes the total amount owed to the bank by the director, officer or employee [LOANS] in excess of the limits in this subsection [\$10,000], or loans of any amount to the chief executive or managing officer of the bank, shall have the prior approval of the board of directors, shall be reported to the department within 30 days, and shall be secured by adequate collateral. [FOR THE PURPOSE OF THIS SECTION, AN OVERDRAFT IS CONSIDERED A LOAN.]

* Section 28. AS 06.05.211 is amended to read:

Sec. 06.05.211. LOANS SECURED BY FOREST TRACTS. (a) A bank may, subject to the requirements of this chapter, make or acquire a loan secured by a first lien on a forest tract if

(1) the loan is made consistent with written lending policies of the bank and any regulations adopted by the department [THE AMOUNT OF THE LOAN DOES NOT EXCEED 60 PER CENT OF THE APPRAISED VALUE OF THE GROWING TIMBER, LAND AND IMPROVEMENTS ON IT OFFERED AS SECURITY];

(2) the bank secures, before the loan is made or acquired, and maintains, in its files, evidence of a determination of the value of the property [THE TERMS AND CONDITIONS OF THE LOAN ARE ADEQUATE TO ENSURE THAT THE LOAN BALANCE WILL NOT

AT ANY TIME EXCEED 60 PER CENT OF THE ORIGINAL APPRAISED VALUE OF THE PROPERTY REMAINING AS SECURITY]; and

(3) [THE TERM OF THE LOAN DOES NOT EXCEED 15 YEARS AND THE ANNUAL PRINCIPAL PAYMENTS EQUAL AT LEAST SIX AND TWO-THIRDS PER CENT OF THE AMOUNT LOANED; AND

(4)] the loan is secured by an amortized mortgage, deed of trust, or assignment of a federal or state timber sale contract.

(b) The aggregate of all loans made or acquired by a bank under this section may not exceed 50 percent [PER CENT] of its combined capital, surplus and undivided profits.

(c) In this section, "forest tract" means a reasonably accessible tract of land primarily covered with marketable or potentially marketable growing timber having a recognized commercial value, which is safeguarded by fire protection, insect, pest and disease control.

* Section 29. AS 06.05.212(a) is amended to read:

(a) A director, officer, or employee of a state bank may not [WHO] knowingly, wilfully and persistently overdraw [OVERDRAWS] the director's, officer's, or employee's account or permit [WHO PERMITS] a customer to do so [, IS ENGAGED IN AN UNSOUND BANKING PRACTICE AND SUBJECT TO THE PROVISIONS OF AS 06.01.030].

* Section 30. AS 06.05.215 is repealed and reenacted to read:

Sec. 06.05.215. LIABILITY OF DIRECTORS AND OFFICERS FOR CERTAIN LOANS. A director, executive officer, managing officer, or issuing officer of a state bank who knowingly or with gross negligence approves or permits the funds of the bank to be lent or overdrafts to be made in an unsafe or unsound manner, or in violation of an order of the department, the bank's lending policies, this title, or regulation adopted under this title, is personally liable to the bank for all such loans or overdrafts. The liability may be enforced against the director or officer by an action in a court of competent jurisdiction.

* Section 31. AS 06.05.225 is amended to read:

Sec. 06.05.225. APPLICATION OF OTHER LAWS TO LOANS UNDER TITLE I OF THE NATIONAL HOUSING ACT [AS 06.05.220]. No law of the state prescribing or limiting interest rates upon loans applies to loans made under Title I of the National Housing Act, 12 U.S.C. sec. 1706c [AS 06.05.220].

* Section 32. AS 06.05.230 is amended to read:

Sec. 06.05.230. INVESTMENT IN PROPERTY [REAL ESTATE] AND BANKING PREMISES. A bank may acquire, purchase, hold, and convey [AND HYPOTHECATE] real and personal property for the following purposes only:

(1) [REAL PROPERTY NECESSARY FOR] the convenient transaction of, or the promotion of, its business, including buildings containing banking offices, equipment, furniture and fixtures, art work, leasehold improvements, [AND] parking lots, and, with prior approval of the department, real property reasonably anticipated to be necessary for future expansion of the bank, if the book asset value of the purchase or investment does not exceed 60 percent [PER CENT] of the capital [ACCOUNT] and [THE] surplus [ACCOUNT] of the bank; [THE PURCHASE OR INVESTMENT MAY CONSIST OF STOCK IN A BANK BUILDING CORPORATION, IN WHICH CASE IT MUST INCLUDE ALL OBLIGATIONS OF THE BUILDING CORPORATION TO THE BANK;]

(2) the satisfaction of or on account of debts previously contracted in the course of its business;

(3) the purchase at sale under judgment, decree, lien, or mortgage foreclosure, against security held by it.

* Section 33. AS 06.05.235(a) is amended to read:

(a) Except as provided in [(b) OR (e) OF] this section or AS 06.05.521, it is unlawful for a company to own, control or hold with power to vote 25 percent or more of a class of voting securities or other capital stock of one or more state banks or domestic bank holding companies subject to regulation under this chapter. However, when it becomes a bona fide necessity to avoid loss for a

creditor to accept shares of stock in one or more state banks or domestic bank holding companies constituting more than 25 percent of the ownership or control of a state bank or domestic bank holding company in payment of indebtedness owing to the creditor, shares of stock may be accepted, but the shares of the one or more state banks or domestic bank holding companies exceeding that 25 percent shall be promptly disposed of under the supervision of the department.

* Section 34. AS 06.05.235(b) is amended to read:

(b) A domestic bank holding company that maintains its principal office and place of business in the state and conducts its principal operations in the state, may acquire and own all or any portion of the voting securities or other capital stock of, or all or substantially all of the assets of, one or more banks or bank holding companies. The department may require a domestic bank holding company to post a bond with the department in an amount **not more than** [EQUAL] to the paid-in capital and paid-in surplus represented by the proportion of state bank stock directly or indirectly owned, held, or controlled by it, under conditions the department may prescribe, to assure full protection of the public. **Before a domestic bank holding company may acquire a bank or bank holding company doing business in this state, the domestic bank holding company must apply for and obtain a permit from the department. In considering whether to issue a permit, the department will consider the benefits to the public, the preservation of a competitive banking industry, and the maintenance of a safe and sound bank industry.** The domestic bank holding company is subject to an examination by the department or a competent person designated by the department when the department considers it necessary, but not less than once each year. The domestic bank holding company shall pay an examination fee under AS 06.01.010.

* Section 35. AS 06.05.235(g) is amended to read:

(g) For the purpose of this section **and AS 06.05.521**, a trust company organized under AS 06.25 that is engaged in the business of banking shall be considered a state bank.

* Section 36. AS 06.05.235 is amended by adding a new subsection to read:

(i) The provisions of this section do not apply to a company

(1) that acquires or holds voting securities or other capital stock of a bank or bank holding company only for a reasonable period of time in connection with the underwriting of securities;

(2) that is an agency of the state;

(3) that is a trustee or agent of an independent federal financial regulatory agency; or

(4) that, under a plan of financial restructuring which is intended to prevent the failure of a state bank and which is approved by the department,

(A) acquires or receives 25 percent or more of a class of voting securities or other capital stock of the bank or bank holding company subject to the plan, and owns, controls, or holds, with the power to vote, the securities acquired or received in excess of 24.99 percent of that class for a period of time that will permit the distribution or resale of the securities or other capital stock on a reasonable basis; or

(B) purchases or receives securities under the plan and, after the purchase or receipt, owns, controls, or holds, with a power to vote, less than 25 percent of a class of voting securities or other capital stock of the bank or bank holding company subject to the plan but subsequently, solely through the action or inaction of others, including the bank or bank holding company, owns, controls, or holds, with a power to vote, 25 percent or more of a class of voting securities or other capital stock of the bank or bank holding company; however, the exemption in this subparagraph will not apply if the department determines after notice and opportunity for hearing under AS 06.01.030, that the ownership, control, or holding of the securities or stock exceeding 24.99 percent of a class, otherwise than under a plan to promptly dispose of the securities or stock under the supervision of the department, would permit the organization in any manner to control the election of a majority of the board of directors or trustees, or to directly or indirectly exercise a controlling influence over the management or policies of the bank or bank holding company.

* Section 37. AS 06.05.240 is amended to read:

Sec. 06.05.240. ACQUISITION OF PROPERTY TO SATISFY OR PROTECT PREVIOUS LOAN. A state bank may take property of any kind [, INCLUDING SHARES OF ITS OWN CAPITAL STOCK,] to satisfy or protect a loan previously made in good faith and in the ordinary course of business. A bank may take the capital stock of the bank or any of the bank's parent holding companies only after compliance with AS 06.05.205(d). The property shall be entered on the books at cost, or fair market value, whichever is less. Property acquired to satisfy or protect previous loans shall be disposed of over periods of time as the department may prescribe [PRESCRIBES] by regulation.

* Section 38. AS 06.05.245 is amended to read:

Sec. 06.05.245. DISPOSITION OF PROPERTY NOT NEEDED IN THE CONDUCT OF A BANKING BUSINESS. All real estate and personal property not necessary for the convenient transaction or promotion of a [CONSERVATIVE] banking business under AS 06.05.230 that comes into the possession of a state bank shall be disposed of as soon as possible [UNDER THE REGULATIONS OF THE DEPARTMENT]. If the real estate or personal property is not sold within the time limit prescribed by the department in regulations, it shall be written off and may not be carried as an asset of the bank.

* Section 39. AS 06.05.255(a) is amended to read:

(a) The aggregate amount of outstanding liabilities of a state bank for money borrowed, exclusive of (1) capital notes and debentures issued under AS 06.05.307, (2) obligations incurred in connection with the purchase of bank premises under AS 06.05.230(!), and (3) agreements to repurchase securities earlier sold by the bank at the end of a stated period [BORROWING FOR EMERGENCY PURPOSES AS PERMITTED BY THE DEPARTMENT], may not at any time exceed 15 percent of the bank's total assets. [THE TOTAL AMOUNT OF ITS UNIMPAIRED CAPITAL AND ONE-HALF OF ITS UNIMPAIRED SURPLUS] or a larger amount if approved by the department.

* Section 40. AS 06.05.260(a) is amended to read:

(a) A bank may not give preference to a depositor or creditor by pledging any of the assets of a bank as collateral security except

(1) to the state to secure state funds, or to a municipal corporation or other public corporation, municipal utility or municipal utility board, or political subdivision of the state to secure its funds, and to the United States as may be required to make the bank a depository for United States funds;

(2) to secure a mortgage or deed of trust in connection with the purchase of banking premises as provided in AS 06.05.230, provided that the property pledged is only that purchased in the transaction; or

(3) to a federal reserve bank or federal home loan bank in the manner required by the rules, laws and regulations of the federal reserve bank or federal home loan bank, as applicable.

* Section 41. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.262. UNAUTHORIZED ASSUMPTION OF LIABILITY. Except as expressly permitted in this chapter a state bank may not assume liability as an insurer or as a guarantor or endorser of any security instrument or obligation in which or with respect to which it has no property interest.

* Section 42. AS 06.05.270(a) is amended to read:

(a) In addition to loans and acquisitions expressly authorized by this chapter, a state bank may deal in, underwrite, and invest in for its own account those obligations authorized in regulations of the department.

[(1) DIRECT OR GUARANTEED OBLIGATIONS OF THE UNITED STATES, EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF, OR OTHER INTERESTS IN, AN OPEN-END MANAGEMENT TYPE INVESTMENT COMPANY OR INVESTMENT TRUST REGISTERED UNDER 15 U.S.C. 80A-1 - 80A-64 (INVESTMENT COMPANY ACT OF 1940), IF

(A) THE PORTFOLIO OF THE INVESTMENT COMPANY OR INVESTMENT TRUST IS LIMITED TO OBLIGATIONS OF THE UNITED STATES GOVERNMENT AND REPURCHASE AGREEMENTS FULLY COLLATERALIZED BY THE OBLIGATIONS; AND

(B) THE INVESTMENT COMPANY OR INVESTMENT TRUST TAKES DELIVERY OF THE COLLATERAL DIRECTLY OR THROUGH AN AUTHORIZED CUSTODIAN;

(2) GENERAL OBLIGATIONS OF THE STATE OF ALASKA AND ITS POLITICAL SUBDIVISIONS;

(3) GENERAL OBLIGATIONS OF A STATE OF THE UNITED STATES OR ITS POLITICAL SUBDIVISIONS;

(4) REVENUE OBLIGATIONS OF THE STATE OF ALASKA OR ITS POLITICAL SUBDIVISIONS SUBJECT TO THE LIMITATION OF (B) OF THIS SECTION;

(5) REVENUE OBLIGATIONS OF A STATE OF THE UNITED STATES OR ITS POLITICAL SUBDIVISIONS SUBJECT TO THE LIMITATION OF (B) OF THIS SECTION;

(6) OBLIGATIONS OF INSTRUMENTALITIES OF THE UNITED STATES GOVERNMENT INCLUDING, BUT NOT LIMITED TO FEDERAL INTERMEDIATE CREDIT BANKS, FEDERAL LAND BANKS, THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, AND BANKS FOR COOPERATIVES;

(7) COMMERCIAL PAPER OF PRIME OR EQUIVALENT QUALITY AS RATED BY A RECOGNIZED NATIONAL RATING SERVICE SUBJECT TO THE LIMITATION OF (B) OF THIS SECTION;

(8) SECURED CORPORATE OBLIGATIONS RATED WITHIN THE THREE HIGHEST GRADES OF A NATIONAL RATING SERVICE SUBJECT TO THE LIMITATION OF (B) OF THIS SECTION;

(9) OBLIGATIONS OF THE INTERNATIONAL BANK FOR RECONSTRUCTION

AND DEVELOPMENT, THE INTER-AMERICAN DEVELOPMENT BANK, OR THE AFRICAN DEVELOPMENT BANK, SUBJECT TO THE LIMITATION OF (B) OF THIS SECTION;

(10) STOCK IN THE FEDERAL NATIONAL MORTGAGE ASSOCIATION, A FEDERAL RESERVE BANK, OR A FEDERAL HOME LOAN BANK;

(11) THE STOCKS, BONDS, AND OTHER SECURITIES OF

(A) A CORPORATION LICENSED UNDER AS 10.13; OR

(B) A CORPORATION ATTEMPTING TO BECOME LICENSED UNDER AS 10.13 IF THE CORPORATION INTENDS TO USE THE PROCEEDS TO FULFILL THE TASKS NECESSARY TO BECOME LICENSED UNDER AS 10.13.]

Section 43. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.272. BANK SUBSIDIARIES. (a) A state bank may purchase or establish, and operate, one or more subsidiaries engaged in any of the following activities, provided the subsidiary has any necessary licenses or permits and the operation is not detrimental to the bank's business:

- (1) real estate ownership, development, and leasing;
- (2) insurance sales and service;
- (3) securities brokerage;
- (4) any other activity authorized in regulations adopted under this section; or
- (5) any other activity approved by the department.

(b) A bank may invest an amount equal to the lesser of 20 percent of its total assets or 50 percent of its total capital accounts in subsidiaries under this section. Loans to subsidiaries may be considered investments subject to the limitations of this subsection.

(c) A subsidiary of a state bank is subject to examination by the department as part of the examination of the bank under AS 06.01.015.

* Section 44. AS 06.05.275(b) is amended to read:

(b) A bank may discount, invest in, negotiate and issue trade acceptances and bank acceptances

if

(1) the terms of the draft require presentation for payment within 180 days of issuance, exclusive of days of grace, and it is drawn to finance the purchase of goods with maturity and payment in accordance with the terms of the purchase agreement;

(2) the terms of the draft require presentation for payment within 180 days of issuance, exclusive of days of grace, and it is secured by shipping documents transferring or securing title to goods, or by receipt of a licensed or bonded warehouse securing title to readily marketable goods; or

(3) the draft is drawn by a bank outside the continental limits of the United States for the purpose of furnishing dollar exchange for trade and its terms require presentation for payment within 90 days of issuance.

* Section 45. AS 06.05.275 is amended by adding a new subsection to read:

(d) No person shall own, operate or acquire an institution which engages in the business of making commercial loans but does not accept demand deposits, commonly known as a nonbank bank.

* Section 46. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.301. **APPLICABILITY OF CORPORATIONS CODE.** (a) Only corporations organized under the Alaska Corporations Code (AS 10.06) and this title, national banks with a principal place of business in Alaska, and interstate and international banks with a certificate of authority under AS 06.05.491, may engage in the banking business.

(b) All provisions of the Alaska Corporations Code, AS 10.06, apply to state banks, except those provisions inconsistent with this chapter including AS 10.06.010(4) - (8), 10.06.105(a), 10.06.325, 10.06.356, 10.06.358 - 10.06.360, 10.06.370, 10.06.385 - 10.06.388, 10.06.420(i), 10.06.430, 10.06.453, 10.06.460(b), 10.06.485, 10.06.523 - 10.06.868, 10.06.915, 10.06.960, and 10.06.990(30) and (36).

* Section 47. AS 06.05.305 is amended to read:

Sec. 06.05.305. **CAPITAL STRUCTURE.** (a) A corporation may not commence and operate

a banking business in the state in a community with a population greater than 35,000 unless the corporation has paid-in capital in an amount acceptable to the department but not less than [AT LEAST] \$2,000,000 [\$250,000] and paid-in surplus equal to 20 per cent of paid-in capital. A corporation may not commence and operate a banking business in the state in a community with a population less than 35,000 unless the corporation has paid-in capital in an amount acceptable to the department but not less than \$1,000,000 and paid-in surplus equal to 20 per cent of paid-in capital. A bank may not operate any branches unless it has [AN AGGREGATE] paid-in capital and paid-in surplus in amounts acceptable to the department [OF AT LEAST \$800,000].

(b) The capital [STOCK] of a state bank may not be reduced to an amount less than is required by the department [IN THIS CHAPTER] for capital under (a) of this section. A reduction of capital [STOCK , CANCELLATION OF STOCK CERTIFICATES,] or [REDUCING OF] the liability of the shareholders [STOCKHOLDERS] is not valid until it is approved by the department.

(c) If a state bank fails to maintain its total [ADJUSTED] capital accounts and loan loss reserves in an amount equal to the [SUBSTANDARD] assets classified as substandard [AS REPORTED] by the Federal Deposit Insurance Corporation or the state in the [A] bank's latest report of examination, the department shall consider the failure as endangering the safety of depositors [THE DEPOSITOR] and may direct the bank's directors to increase the capital accounts in an amount sufficient to cover substandard assets.

* Section 48. AS 06.05.310 is repealed and reenacted to read:

Sec. 06.05.310. CORRECTION OF IMPAIRMENT OF CAPITAL. If the department determines that it is necessary for the protection of depositors, the department may issue an order under AS 06.01.030 to require a state bank to increase its capital accounts or to reduce its deposits. In making a decision whether to issue an order under this section, the department shall take into consideration the

- (1) quality of management;
- (2) quality and liquidity of assets;

- (3) history of earnings and retention of earnings;
- (4) quality and character of ownership;
- (5) potential volatility of deposit structure;
- (6) quality and cost of bank operations;
- (7) capacity to meet present and future needs of the area served, considering the bank's competition.

* Section 49. AS 06.05.320 is amended to read:

Sec. 06.05.320. BANK PURCHASES OF OWN SHARES [PROHIBITED]. Except pursuant to written approval of the department, a [A] bank may not purchase its own capital stock.

* Section 50. AS 06.05.327 is amended to read:

Sec. 06.05.327. CHANGE IN OUTSTANDING VOTING SHARES [STOCK]. Before [IF] a change may occur [OCCURS OR IS ABOUT TO OCCUR] in the outstanding voting shares [STOCK] of a state bank that will result in a change in the control of the bank, or before [IF] any sales or transfers by or to a person, corporation or other legal entity of the aggregate of 10 percent [PERCENT] or more of the voting shares [STOCK] of a state bank may be made. the transaction must be approved by [ARE ABOUT TO BE CONSUMMATED, THE PRESIDENT OR OTHER CHIEF EXECUTIVE OFFICER OF THE BANK IMMEDIATELY UPON OBTAINING KNOWLEDGE OF THE CHANGE IN THE CONTROL OF THE BANK OR THE CONTEMPLATED OR CONSUMMATED SALE OR TRANSFER OF STOCK, SHALL REPORT THESE FACTS TO] the department.

* Section 51. AS 06.05.342(a) is amended to read:

(a) Subscription agreements and accompanying prospectuses or offering circulars, whether for a proposed state bank or for an increase in capital of an existing state bank, shall be submitted to the department for approval before their use. The department shall determine whether the subscription agreements or offering circulars provide full and accurate disclosure of the material terms of the offering. The department may order the incorporators not to accept any stock subscriptions or to cease

accepting subscriptions if it determines that the incorporators are not acting lawfully or in good faith.

* Section 52. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.344. APPLICATION FOR APPROVAL OF STATE BANK. (a) Before the department issues a certificate of incorporation under AS 10.06.910, the incorporators of a proposed state bank shall obtain the approval of the department. In applying for the approval the incorporators shall submit to the department

(1) an application in the form and containing the information the department requires, including

(A) any past and present connection with any bank other than as a customer on terms generally available to the public of each incorporator and proposed director and each pre-incorporation subscriber of more than five percent of the capital stock;

(B) the name, residence and occupation of each pre-incorporation subscriber and the number of shares subscribed for by each;

(C) the address of the proposed place of business of the bank or, if an address is not available, a legal description of the proposed place of business; and

(2) the proposed articles of incorporation together with all applicable fees, payable to the department, for the filing.

(b) Investigation expenses incurred by the department in processing an application for approval of a proposed bank shall be charged to and paid by the applicant in accordance with AS 06.01.010. At the time of submitting the application to the department, the applicant shall pay to the department \$2000 in partial payment of the investigation expenses incurred by the department. If the investigation expenses incurred by the department do not exceed \$2000, the remainder shall be promptly refunded to the applicant.

(c) The department shall notify the incorporators of its decision whether to accept an application for a proposed state bank. If the application and accompanying documents required by (a) of this section do not conform to the requirements of this chapter and to the regulations adopted under this chapter,

the department shall return the documents with an explanation of the defects. If the department does not act within 30 days of receipt of the application, the application shall be considered accepted; however, acceptance of the application does not constitute approval.

(d) The incorporators shall publish notice of the department's acceptance of the application for a proposed state bank and articles of incorporation once each week for two successive weeks in a newspaper of general circulation published in the community proposed as the bank's principal place of business. If there is no newspaper in the proposed principal place of business, the notice shall be published in a newspaper of general circulation near the community. The first publication of the notice shall appear within 15 days after the application and articles of incorporation have been accepted by the department. The notice must state:

(1) the name of the proposed state bank;

(2) that the proposed bank is to be incorporated under this chapter and AS 10.06;

(3) the purpose of the proposed bank; and

(4) the names and addresses of the incorporators and the initial board of directors as they appear in the articles of incorporation.

(e) Proof of publication under (d) of this section shall be by affidavit of the publisher of the newspaper in which it was made and shall be filed with the department.

(f) Upon acceptance of an application for approval of a proposed state bank, the department shall conduct an investigation to ascertain whether

(1) the convenience and needs of the public will be served by the bank;

(2) the population density and economic characteristics of the area primarily to be served by the bank afford reasonable promise of adequate support for the bank;

(3) the character and fitness of the incorporators and the members of the initial board of directors are of a nature which commands the confidence of the community and warrants the belief that the business of the bank will be honestly and efficiently conducted;

(4) the proposed capital structure of the bank meets the requirements set by the