RESEARCH MEMO

State of Alaska

Department of Law

RE: Legislative history and recommendation regarding 3 year extension of operating loans under AS 03.10.030(c).

DATE: 4/22/2010

FILE NO. 661070281

TEL. NO.: 907-269-3039

FROM: Bob McFarlane
Assistant Attorney General
Commercial & Fair Business

SUBJECT: 3 year loan extensions under AS 03.10.030(c)

Issue #1: Interpretation of AS 03.10.030(c):
The interpretation of AS 03.10.030(c) has been the subject of previous BAC loans. That provision appears to allow the BAC to extend a short term operating loan for up to 3 year at any time after the operating loan is made. Questions have arisen as to the conditions under which such extensions may be granted and the appropriate procedure for granting such extensions. In order to clarify the situations in which an extension of an operating loan can be granted I reviewed the legislative history behind subsection (c). The following is a brief summary of that history:

Summary of Legislative History:
The legislation that added subsection (c) to 03.10.030 was sponsored by Senator Jan Faiks in 1984 as Senate Bill 342. In 1984 many farmers were facing foreclosure as a result of their inability to pay their operating loans. Delinquencies on one year operating year loans (which were typically paid at the end of the one year term) were 41% of the fund delinquencies. Subsection (c) was added to deal with the expanding number of operating loans that were going into default at that time. The original bill proposed to allow the board to extend an operating loan over a period as long as 20 years in order to give farmers additional time to recover from a crop failure or other unforeseen inability to pay. Senator Vic Fischer wanted the extension time reduced to one year but Senator Mulcahy noted that it was unreasonable to expect a good crop year to pay off two crop years if the previous year was poor. Senator Mulcahy thought a five year extension period would be needed to amortize a bad loan. Bill Heim, Director of the Division of Agriculture at the time, testified at a hearing on May 3, 1994, that he wanted the ability to extend short term loans for up to three years. He said that, under the current law, once the loan went beyond the one year payment period the division would have to carry the loan as delinquent or foreclose and that by extending the loan for up to 3 years a farmer had a better chance of surviving a bad season and eventually bringing the loan current. The legislature ultimately settled on the three year extension period that is now in subsection (c).

Comments and Recommendation:

On its face, subsection (c) does not require a finding of financial hardship. Nor does it require a borrower to wait any specific amount of time before applying for an extension. A certain amount of flexibility is built into the statute. However the clear intention of the legislature was to give the board the ability to deal with unexpected financial hardships by granting an extension of time to pay in situations where a borrower had experienced an unexpected financial hardship. Due regard should be given to this legislative intent. Although previous loan extensions by the board were legally permissible, in the future, the board should limit use of the extension provision to situations where a borrower needs additional time to pay off an operating loan as a result of some unforeseen financial problem such as a poor harvest or unexpected and abnormally high expenses.

Issue #2: Possibility of regulatory changes to subsection (c):

In addition to the extension issue the board has asked whether subsection (c) can be changed by regulation to allow a more streamlined way to grant an extension. The answer to that question is "no". The BAC statutes confer no authority on the BAC to enact regulations that conflict with or modify the specific provisions of this particular statute. The only way to change this statute is by an amendment to the statute itself. If the board wants to change subsection (c) it will have to work through the division of Agriculture and DNR to find a legislator who is willing to sponsor that change.