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Bannister
3/26/14

CS FOR HOUSE BILL NO. 121(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE FEIGE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the examinations, board, loans, and records of the Alaska
2 Commercial Fishing and Agriculture Bank; and providing for an effective date."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 44.81.215 is amended to read:

5 **Sec. 44.81.215. Lending powers of the bank.** The bank may

6 (1) make loans to individuals, including married couples, who are
7 residents of the state and who are engaged in commercial agriculture or fishing,
8 including harvesters, processors, suppliers, and marketers, if at least one of the
9 primary obligors on the loan is a member of the bank;

10 (2) make loans to corporations, partnerships, or limited liability
11 companies engaged in commercial agriculture or fishing if the majority interest of the
12 corporation, partnership, or limited liability company is beneficially owned by
13 residents of the state and a majority of the owners are residents of the state, and if at
14 least one of the primary obligors on a loan is a member of the bank; however, the bank

may not make a loan under this paragraph to a corporation, partnership, or limited liability company for the purchase of a new or existing fishing boat or for the repair or renovation of an existing fishing boat if the primary purpose of the fishing boat is to commercially harvest fishery resources, unless the corporation, partnership, or limited liability company is wholly owned and controlled by residents of the state, and unless at least one of the primary obligors on the loan is a member of the bank;

(3) make loans for limited entry permits to individuals who fish commercially if the individual is a state resident; loans made under this paragraph are subject to AS 44.81.231;

(4) make loans [NOT TO EXCEED \$500,000] to individuals, including married couples, who are residents of the state and who will use the loan proceeds to commercially engage in tourism within the state if at least one of the primary obligors on the loan is a member of the bank;

(5) make loans [NOT TO EXCEED \$1,000,000] to corporations, partnerships, or limited liability companies that will use the loan proceeds to commercially engage in tourism within the state if the majority interest of the corporation, partnership, or limited liability company is beneficially owned by residents of the state and a majority of the owners are residents of the state, and if at least one of the primary obligors on the loan is a member of the bank;

(6) make loans [NOT TO EXCEED \$500,000] to individuals, including married couples, who are residents of the state and who will use the loan proceeds to commercially engage in the development or exploitation of natural resources within the state if at least one of the primary obligors on the loan is a member of the bank;

(7) make loans [NOT TO EXCEED \$1,000,000] to corporations, partnerships, or limited liability companies that will use the loan proceeds to commercially engage in the development or exploitation of natural resources within the state if the majority interest of the corporation, partnership, or limited liability company is beneficially owned by residents of the state and a majority of the owners are residents of the state, and if at least one of the primary obligors on the loan is a member of the bank;

(8) make a loan for capital investment or operating capital to a shore-based fish processor, a timber processor, or an agricultural processor or harvester who does not meet the residency or resident ownership requirements of (1) or (2) of this section but meets the other requirements of (1) or (2) of this section, if a facility of the processor or harvester is located in the state and the majority interest in the processor or harvester is beneficially owned by residents of the United States;

(9) make a loan to a person, regardless of residency, if the board determines that the loan is necessary to preserve the value of property held by the bank as security for a loan that was made under AS 44.81.210 or this section and that is in default;

(10) make loans, as provided in (1), (2), [OR] (4) - (8), or (15) - (18) of this section, that are secured by liens subordinate to valid first liens and security agreements granted to another creditor;

(11) accept the pledge of a limited entry permit as security for a loan made under this chapter subject to the conditions set out in AS 44.81.236 on pledges of limited entry permits;

(12) make loans in participation with other lenders as provided in (1), (2), [OR] (4) - (8), or (15) - (18) of this section, whether or not an obligor is a member of the bank;

(13) purchase or acquire participations in loans from other lenders if the participations conform to the provisions of (1), (2), [OR] (4) - (8), or (15) - (18) of this section, whether or not an obligor is a member of the bank;

(14) issue certificates of loan participation to members and to other individuals, corporations, partnerships, and limited liability companies, but the bank may not issue a certificate of loan participation if the certificate would allow participation by the member, individual, corporation, partnership, or limited liability company in loans that individually or cumulatively involve more than 20 percent of the commercial fishery entry permits issued for one type of gear in a specific fishery resource administrative area;

(15) make a loan for a tourism-related operation to individuals, including married couples, who are not residents of the state, if

1 (A) the individuals will use the loan proceeds to
2 commercially engage in the operation in the state;

3 (B) a facility of the operation is located in the state; and

4 (C) at least one of the primary obligors on the loan is a
5 member of the bank;

6 (16) make a loan to a corporation, partnership, or limited liability
7 company for a tourism-related operation when a majority of the owners of the
8 corporation, partnership, or limited liability company are not residents of the
9 state, if

10 (A) the corporation, partnership, or limited liability
11 company will use the loan proceeds to commercially engage in the
12 operation in the state;

13 (B) a facility of the operation is located in the state;

14 (C) at least one of the primary obligors on the loan is a
15 member of the bank; and

16 (D) the majority interest in the corporation, partnership, or
17 limited liability company is beneficially owned by residents of the United
18 States;

19 (17) make a loan to individuals, including married couples, who
20 are not residents of the state for an operation that is dedicated to the
21 development or exploitation of natural resources, if

22 (A) the individuals will use the loan proceeds to
23 commercially engage in the operation in the state;

24 (B) a facility of the operation is located in the state; and

25 (C) at least one of the primary obligors on the loan is a
26 member of the bank;

27 (18) make a loan to a corporation, partnership, or limited liability
28 company in which a majority of the owners of the corporation, partnership, or
29 limited liability company are not residents of the state, if the loan is for an
30 operation that is dedicated to the development or exploitation of natural
31 resources, and

1 (A) the corporation, partnership, or limited liability
2 company will use the loan proceeds to commercially engage in the
3 operation in the state;

4 (B) a facility of the operation is located in the state;

5 (C) at least one of the primary obligors on the loan is a
6 member of the bank; and

7 (D) the majority interest in the corporation, partnership, or
8 limited liability company is beneficially owned by residents of the United
9 States.

10 * **Sec. 2.** AS 44.81.215 is amended by adding a new subsection to read:

11 (b) The bank may not make a loan on a limited entry permit or other collateral
12 to an individual, corporation, partnership, or limited liability company engaged in
13 commercial fishing, including a harvester, processor, supplier, or marketer, if the
14 collateral is to be used in a mixed stock fishery with the potential to affect any discrete
15 stock or species that has been declared a stock of concern by the Alaska Board of
16 Fisheries within the last two life cycles of the stock or species.

17 * **Sec. 3.** AS 44.81.225(a) is amended to read:

18 (a) To facilitate the development of commercial fisheries and commercial
19 agriculture in geographic areas in which factors such as geographic considerations,
20 uncertainties of communication, or limited demands do not encourage normal lending
21 activities, the bank may make small loans to qualified borrowers who are not members
22 of the bank.

23 * **Sec. 4.** AS 44.81.225(b) is amended to read:

24 (b) The provisions of this chapter apply to loans authorized by this section
25 except that

26 (1) the borrower is not required to be a member of the bank at the time
27 the loan is approved; and

28 (2) the principal amount of the portion of the loan made by the bank
29 may not exceed \$50,000 [\$25,000].

30 * **Sec. 5.** AS 44.81.225(c) is amended to read:

31 (c) The total amount of money that may be loaned under this section may not

exceed 25 [EIGHT] percent of the total capital of the bank.

* **Sec. 6.** AS 44.81.260(a) is amended to read:

(a) The records of the bank that are identified with, or identifiable as being derived from the records of, a specific borrower, member of the bank, or applicant for a loan are confidential and may not be disclosed by the bank or by its directors, officers, employees, or agents to a person other than the directors, officers, employees, or agents of the bank, except

(1) when required by a federal or state statute;

(2) under AS 44.81.270 and 44.81.275;

(3) under a search warrant issued under federal law or the law of this state;

(4) under a subpoena or court order issued in a civil action under federal law or the law of this state;

(5) under a subpoena or court order issued in connection with a proceeding before a federal grand jury or grand jury of this state;

(6) under a summons or subpoena issued by an agency or a department of the United States or this state, or an officer, employee, or agent of the agency or department;

(7) under a request by a financial institution, if the request is solely for the stated written purpose of determining the creditworthiness [CREDIT WORTHINESS] of a member or borrower as an applicant for credit, and if the information disclosed by the bank pertains only to the payment history of the member or borrower;

(8) under a request by a lender that has extended or is considering extending credit to the bank if the credit is or may be secured by the pledge of a loan by the bank;

(9) when disclosed to the attorney general of the United States or to a law enforcement agency of this state if the records may be relevant to a report or investigation of a possible violation of federal law or a law of this state.

* **Sec. 7.** AS 44.81.260 is amended by adding a new subsection to read:

(e) Notwithstanding (a) and (b) of this section, the bank may provide a list of

the members of the bank who are eligible to serve as a director of the bank to members of the bank who are eligible to vote for directors of the bank.

* **Sec. 8.** AS 44.81 is amended by adding a new section to read:

Sec. 44.81.275. Examinations. (a) At intervals that are not greater than 36 months, an examiner from the department shall perform an examination of the bank. Each interval shall be determined by the commissioner. During the examination, the examiner shall evaluate the quality of the bank's loan portfolio on a statistical basis and on the appropriateness and effectiveness of the bank's policies, practices, and management to carry out the bank's statutory purposes.

(b) The examiner shall prepare a summary report of the examiner's findings and conclusions. The department shall distribute a copy of the report to the bank and to the legislative auditor, but the records, information, and findings of the department related to the examination are otherwise confidential under AS 06.01.025.

(c) The commissioner shall assess the bank a fee for the actual expenses necessarily incurred by the department in connection with an examination performed under this section. The fee must include the proportionate part of the salaries and cost of employee benefits of the examiners while conducting the examination and while preparing the summary report required by (b) of this section and the transportation costs and per diem of each examiner while away from the examiner's duty station. The fee may not exceed the actual cost to the department for the examination. The commissioner shall assess the fee as soon as feasible after the examination has been completed. The bank shall pay the assessment within 30 days after receiving the commissioner's notice of the assessment.

(d) In this section,

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

(2) "department" means the Department of Commerce, Community, and Economic Development.

* **Sec. 9.** AS 44.81.020(f) is repealed.

* **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to read:

1 EXAMINATIONS. Notwithstanding AS 44.81.275, added by sec. 8 of this Act, the
2 Department of Commerce, Commerce, and Economic Development may not conduct an
3 examination under AS 44.81.275, added by sec. 8 of this Act, until on or after the date that is
4 one year after the effective date of this Act.

5 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).