

HOUSE BILL NO. 121

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-EIGHTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FEIGE

Introduced: 2/15/13

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

11 (2) make loans to corporations, partnerships, or limited liability
12 companies engaged in commercial agriculture or fishing if the majority interest of the
13 corporation, partnership, or limited liability company is beneficially owned by
14 residents of the state and a majority of the owners are residents of the state, and if at

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

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

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

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

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

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

1 member of the bank;

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

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

12 (10) make loans, as provided in (1), (2), [OR] (4) - (8), (15), or (16) of
13 this section, that are secured by liens subordinate to valid first liens and security
14 agreements granted to another creditor;

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

18 (12) make loans in participation with other lenders as provided in (1),
19 (2), [OR] (4) - (8), (15), or (16) of this section, whether or not an obligor is a member
20 of the bank;

21 (13) purchase or acquire participations in loans from other lenders if
22 the participations conform to the provisions of (1), (2), [OR] (4) - (8), (15), or (16) of
23 this section, whether or not an obligor is a member of the bank;

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

31 (15) make a loan for a tourism-related operation to individuals,

1 including married couples, who are not residents of the state, if

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

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

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

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

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

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

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

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

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

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

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

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

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

1 resources, and

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

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

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

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

11 * **Sec. 2.** AS 44.81.225(a) is amended to read:

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

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

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

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

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

24 * **Sec. 4.** AS 44.81.225(c) is amended to read:

25 (c) The total amount of money that may be loaned under this section may not
 26 exceed 25 [EIGHT] percent of the total capital of the bank.

27 * **Sec. 5.** AS 44.81.260(a) is amended to read:

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

1 or agents of the bank, except

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

3 (2) under AS 44.81.270 and 44.81.275;

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

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

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

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

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

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

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

24 * **Sec. 6.** AS 44.81.260 is amended by adding a new subsection to read:

25 (e) Notwithstanding (a) and (b) of this section, the bank may provide a list of
26 the members of the bank who are eligible to serve as a director of the bank to members
27 of the bank who are eligible to vote for directors of the bank.

28 * **Sec. 7.** AS 44.81 is amended by adding a new section to read:

29 **Sec. 44.81.275. Examinations.** (a) At intervals that are not greater than 36
30 months, an examiner from the department shall perform an examination of the bank.
31 Each interval shall be determined by the commissioner. During the examination, the

1 examiner shall evaluate the quality of the bank's loan portfolio on a statistical basis
 2 and on the appropriateness and effectiveness of the bank's policies, practices, and
 3 management to carry out the bank's statutory purposes.

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

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

18 (d) In this section,

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

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

23 * **Sec. 8.** AS 44.81.020(f) and AS 44.99.030(a)(2) are repealed.

24 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 25 read:

26 EXAMINATIONS. Notwithstanding AS 44.81.275, added by sec. 7 of this Act, the
 27 Department of Commerce, Commerce, and Economic Development may not conduct an
 28 examination under AS 44.81.275, added by sec. 7 of this Act, until on or after the date that is
 29 one year after the effective date of this Act.

30 * **Sec. 10.** This Act takes effect immediately under AS 01.10.070(c).