



LAWS OF ALASKA

1978

Source

CSHB 763(Rules) am

Chapter No.

159

AN ACT

Relating to commercial fishing and agriculture.

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

* Section 1. FINDINGS. The legislature finds that

(1) certain fish species which thrive in the seas off the coast of Alaska have long provided an abundant food source for foreign nations but have been underutilized by Alaskan fishermen;

(2) there is a potential for these species to provide a new source of revenue for Alaskan fishermen and for the state;

(3) Alaskan fishermen have not utilized these species to the fullest extent possible because of adverse economic and marketing conditions and the high cost of gear and equipment for harvesting;

(4) the 200-mile limit established by the Fisheries Management and Conservation Act of 1976 offers an opportunity for Alaskan fishermen to harvest these species free of the competition of foreign fishermen;

(5) the creation of sources of credit will enable Alaskan fishermen to avail themselves of the opportunities offered by the Fisheries Management and Conservation Act of 1976 to the ultimate benefit of all Alaskans;

(6) access to regional institutions of the federal farm credit system in conjunction with appropriate state agencies will provide the financial resources and specialized knowledge necessary for underutilized fisheries development.

* Sec. 2. PURPOSES. The purposes of this Act are to

Chapter 159

(1) provide sources of credit for Alaskan agriculture and fishing business;

(2) encourage utilization of the fisheries off the coast of Alaska that have been underutilized in the past by local fishermen;

(3) encourage harvesting, processing and marketing of underutilized fish species;

(4) encourage technological development in the harvesting and processing of underutilized fish species;

(5) promote the more rapid development of agriculture.

* Sec. 3. AS 44 is amended by adding a new chapter to read:

CHAPTER 55. COMMERCIAL FISHING AND AGRICULTURE BANK.

Sec. 44.55.010. COMMERCIAL FISHING AND AGRICULTURE BANK. (a) There is established the Commercial Fishing and Agriculture Bank. The bank is a public corporation and government instrumentality in the Department of Commerce and Economic Development but has a legal existence independent of and separate from the state. The exercise by the bank of the powers conferred by this chapter is considered an essential governmental function of the state. Except as otherwise provided in this chapter, the bank is subject to the provisions of AS 10.15.005 - 10.15.600.

(b) For the purpose of the initial funding of the bank's operations, the board of directors shall issue non-voting, preferred shares of stock in the bank and shall determine the value of each share. The State of Alaska, through appropriate agencies, shall purchase the nonvoting, preferred shares initially issued by the bank. Shares purchased by the state shall be repurchased by the bank within 20 years after their purchase. If the bank fails to repurchase the shares within 20 years, the commissioner of commerce and economic development may dissolve the bank.

(c) After the board of directors has completed the necessary organizational matters described in secs. 30 and 40 of this chapter, the commissioner of revenue may purchase with funds from the general fund up to \$2,000,000 of preferred stock of the bank during fiscal year 1979 at such time and with terms agreed upon by the commissioner and the board.

Sec. 44.55.020. BOARD OF DIRECTORS. The bank shall be managed by a board of directors consisting of five members. Initial appointments to the board shall be made by the governor. Thereafter, board members shall be elected by the shareholders. The board members shall annually elect a chairman from among themselves. The purpose of the board is to manage the assets of the bank.

Sec. 44.55.030. ARTICLES OF INCORPORATION. Not later than November 1, 1978, the board of directors shall file with the commissioner of commerce and economic development articles of incorporation as provided in AS 10.15.340 - 10.15.355 except that any filing fees shall be waived.

Sec. 44.55.040. BYLAWS. The board of directors shall adopt the initial bylaws of the bank. The power to alter, amend or repeal the bylaws is vested in the board of directors. The bylaws may contain provisions for the regulation and management of the affairs of the bank not inconsistent with this chapter or other provisions of law.

Sec. 44.55.050. MEMBERSHIP MEETINGS. Upon filing the articles of incorporation, the board of directors, with the assistance of the commissioner of commerce and economic development or his designee, may hold public meetings throughout the state for the purpose of explaining to members of the commercial fishing and farming industries the functions of the bank and to encourage membership in the bank.

Sec. 44.55.060. MEMBERSHIP STOCK. (a) The board of directors shall issue shares of membership stock in the bank in the amounts and with the value determined by the board and stated in the articles of incorporation.

(b) Loans made to shareholders of the bank under the provisions of this chapter shall be in accordance with a schedule of maximum amounts adopted by the board of directors based upon proportional ownership of shares.

Sec. 44.55.070. EXECUTIVE DIRECTOR; STAFF. (a) The board of directors may hire and determine the salary of an executive director. The executive director shall be responsible for the ordinary business of the bank.

(b) The executive director, with the approval of the board of directors, may hire and determine the salary of staff reasonably necessary for the efficient performance of the duties of the bank.

Sec. 44.55.080. EXEMPT STATUS. Employees of the bank are in the exempt service under AS 39.25.

Sec. 44.55.090. TERM OF OFFICE. The members of the board shall be appointed for terms of three years, and they may be reappointed. Terms shall be staggered. Initial terms shall be two members serving for one year, two members serving for two years, and one member serving for three years.

Sec. 44.55.100. QUORUM. A majority of the members of the board constitutes a quorum for the transaction of business and the exercise of the powers and duties of the board.

Sec. 44.55.110. COMPENSATION OF BOARD MEMBERS. Members receive compensation at a rate determined by the board for each day the board meets if they attend the meeting and are entitled to per diem and travel allowances as provided by law for members of state boards and commissions.

Sec. 44.55.120. BONDS OF THE BANK. (a) The bank may borrow money and may issue bonds for that purpose, including but not limited to bonds on which the principal and interest are payable

(1) exclusively from the income and receipts or other money derived from the project financed with the

proceeds of the bonds;

(2) exclusively from the income and receipts or other money derived from designated projects whether or not they are financed in whole or in part with the proceeds of the bonds; or

(3) from its income and receipts or other assets generally, or a designated part or parts of them.

(b) Bonds shall be authorized by resolution of the board of directors, and be dated and shall mature as the resolution may provide, except that no bond may mature more than 30 years from the date of its issue. Bonds shall bear interest at the rate or rates, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption which the resolution or a subsequent resolution may provide.

(c) All bonds, regardless of form or character, shall be negotiable instruments for all the purposes of the Uniform Commercial Code.

(d) All bonds may be sold at public or private sale in the manner, for the price or prices, and at the time or times which the board of directors may determine.

(e) The superior court shall have jurisdiction to hear and determine suits, actions or proceedings relating to the bank, including suits, actions or proceedings brought to foreclose or otherwise enforce a mortgage, pledge, assignment or security of a holder of its bonds or by a trustee for or other representative of the holders.

Sec. 44.55.130. TRUST INDENTURES AND TRUST AGREEMENTS. In the discretion of the board of directors an issue of bonds may be secured by a trust indenture or trust agreement between the bank and a corporate trustee (which may be a trust company, bank, or national banking association, with corporate trust powers, located inside or outside the state) or by a secured loan agreement or other instrument or under a resolution giving powers to a corporate trustee by means of which the bank may

(1) make and enter into any and all the covenants and agreements with the trustee or the holders of the bonds which the board of directors may determine to be necessary or desirable, including, without limitation, covenants, provisions, limitations and agreements as to

(A) the application, investment, deposit, use and disposition of the proceeds of bonds of the bank or of money or other property of the bank or in which it has an interest;

(B) the terms and conditions upon which additional bonds of the bank may be issued;

(2) pledge, mortgage or assign money, leases, agreements, property or other assets of the bank either presently in hand or to be received in the future, or both; and

(3) provide for any other matters of like or different character which in any way affect the security or protection of the bonds.

Sec. 44.55.140. VALIDITY OF PLEDGE. It is the intention of the legislature that a pledge made in respect of bonds shall be valid and binding from the time the pledge is made; that the money or property so pledged and thereafter received by the bank shall immediately be subject to the lien of the pledge without physical delivery or further act; and that the lien of the pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the bank irrespective of whether the parties have notice. Neither the resolution, trust agreement nor any other instrument by which a pledge is created need be recorded or filed under the provisions of the Uniform Commercial Code to be valid, binding or effective against the parties.

Sec. 44.55.150. NONLIABILITY ON BONDS. (a) Neither the members of the board of directors, the executive director, staff, nor a person executing the bonds is liable personally on the bonds or subject to personal liability or accountability by reason of the issuance of the bonds.

(b) The bonds issued by the bank may not constitute an indebtedness or other liability of the state or of a political subdivision of the state, except the bank, but shall be payable solely from the income and receipts or other funds or property of the bank. The bank may not pledge the faith or credit of the state or of a political subdivision of the state, except the bank, to the payment of a bond, and the issuance of a bond by the bank shall not directly or indirectly or contingently obligate the state or a political subdivision of the state to apply money from, or levy or pledge any form of taxation whatever to the payment of the bond.

Sec. 44.55.160. PLEDGE OF THE STATE. The state pledges to and agrees with the holders of the bonds issued under this chapter and with the federal agency or regional institution of the federal farm credit system which loans or contributes funds in respect of a project, that the state will not limit or alter the rights and powers vested in the bank by this chapter to fulfill the terms of any contract made by the bank with the holders or federal agency or regional institution of the federal farm credit system, or in any way impair the rights and remedies of the holders until the bonds, together with interest on them, with interest on unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of the holders, are fully met and discharged. The bank is authorized to include this pledge and agreement of the state, insofar as it refers to holders of bonds of the bank in a contract with the holders, and insofar as it relates to a federal agency or regional institution of the federal farm credit system, in a contract with a federal agency or regional institution of the federal farm credit system.

Sec. 44.55.170. EXEMPTION FROM TAXATION. The real and personal property of the bank and its assets, income and receipts are declared to be property of a political

subdivision of the state and shall be exempt from all taxes and special assessments of the state or a political subdivision of the state, including, without limitation, all boroughs, cities, municipalities, school districts, public utility districts, and other taxing units. All bonds of the bank are declared to be issued by a political subdivision of the state, to be for an essential public and governmental purpose, and to be a public instrumentality, and the bonds, and the interest on them, the income from them, the transfer of the bonds, and all assets, income and receipts pledged to pay or secure the payment of the bonds, or interest on them, shall at all times be exempt from taxation by or under the authority of the state, except for inheritance and estate taxes and taxes on transfers by or in contemplation of death.

Sec. 44.55.180. BONDS LEGAL INVESTMENTS FOR FIDUCIARIES. The bonds of the bank are securities in which all public officers and bodies of the state and all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, savings associations, including savings and loan associations and building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. Notwithstanding any other provisions of law, the bonds of the bank are also securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of bonds or other obligations of the state is now or may hereafter be authorized.

Sec. 44.55.190. CONFLICTS OF INTEREST. No member of the board of directors may vote on a transaction of the bank under this chapter if he is a party to the transaction.

Sec. 44.55.200. REPORTS AND PUBLICATIONS. The board of directors shall publish an annual report to the bank's shareholders. The report shall be made available to the public and shall include financial statements audited by independent outside auditors, a statement of the amount of money received by the bank from each source during the period covered, a statement of the bank's investments, a description of the bank's investment activity during the period covered by the report, an analysis of economic and other effects of investment decisions on the state's commercial fishing and agriculture industries, and any other information the board believes would be of interest to the governor, the legislature and the public. The board may also publish such other reports as it considers desirable to carry out its purposes.

Sec. 44.55.210. POWERS OF THE BANK. The bank may

(1) make variable rate or fixed rate loans to individuals who are residents and who are engaged in commercial agriculture or fishing, including harvesters,

processors and marketers, or to corporations, partnerships or joint ventures primarily engaged in commercial agriculture or fishing, the majority interest of which is beneficially owned by residents of the state and a majority of the owners of which are residents of the state, if the recipient of the loan is a shareholder of the bank; however, the bank may make a loan under this paragraph to a corporation, partnership, or joint venture for the purchase of a new or existing fishing vessel or for the repair or renovation of an existing fishing vessel, the primary purpose of which is to commercially harvest fishery resources, only if the corporation, partnership, or joint venture is wholly owned and controlled by residents of the state and if the recipient of the loan is a shareholder of the bank;

(2) make and alter bylaws necessary or desirable to carry out its corporate functions;

(3) establish amortization plans for repayment of loans, which may include extensions for poor fishing or farming seasons;

(4) enter into agreements with regional institutions of the federal farm credit system, private lending institutions, and other state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(5) adopt, alter, and use a corporate seal;

(6) sue and be sued in the name of the bank;

(7) issue bonds to carry out any of its corporate purposes and powers;

(8) sell, lease as lessor or lessee, exchange, donate, convey or encumber in any manner by mortgage or by creation of any other security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(9) incur secondary liability by guaranty or endorsement of the obligations of another corporation or legal entity when, in the judgment of the board of directors, the action is in furtherance of its corporate purposes;

(10) make loans as provided in (1) of this section in participation with financial institutions, and establish and regulate the terms of the loans;

(11) make contracts and execute instruments necessary or convenient in the exercise of its corporate powers;

(12) acquire by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;

(13) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter agreements and contracts concerning these obligations;

Chapter 159

(14) secure the payment of its obligations by pledge or mortgage or other lien on its contracts, revenues, income, or property;

(15) appoint officers, employees, trustees for certificate holders, and agents, and prescribe their powers and duties;

(16) provide technical services to shareholders; for the purposes of this paragraph, "technical services" includes services that will enhance the ability of the shareholder to obtain financial assistance from the bank;

(17) make loans, as provided in (1) of this section, secured by liens subordinate to valid first liens and security agreements granted to a private lending institution;

(18) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(19) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

Sec. 44.55.220. TRANSITION. Upon the repurchase of all the nonvoting, preferred shares initially issued by the bank and purchased by agencies of the state, the provisions of this chapter lapse and the bank may proceed to operate as a private cooperative corporation under the terms of its bylaws and subject to the provisions of AS 10.15.005 - 10.15.600.