

HOUSE BILL NO. 456

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES COGHILL, Mulder

Introduced: 2/19/02

Referred: House Special Committee on Fisheries, Resources, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the commercial fishing loan program; and providing for an effective
2 date."

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

4 * **Section 1.** AS 16.10.300 is amended to read:

5 **Sec. 16.10.300. Declaration of policy.** It is the policy of the state, under
6 AS 16.10.300 - 16.10.370, to support the participation of resident commercial
7 fishermen in those areas and fisheries of the state in which the financing needs of
8 fishermen are not adequately served by private lending institutions [PROMOTE
9 THE REHABILITATION OF THE STATE'S FISHERIES, THE DEVELOPMENT
10 OF A PREDOMINANTLY RESIDENT FISHERY, AND THE CONTINUED
11 MAINTENANCE OF COMMERCIAL FISHING GEAR AND VESSELS
12 THROUGHOUT THE STATE BY MEANS OF LONG-TERM LOW INTEREST
13 LOANS].

14 * **Sec. 2.** AS 16.10 is amended by adding a new section to read:

1 **Sec. 16.10.311. Powers of the department.** (a) The department may

2 (1) make loans to individual commercial fishermen who have been
3 state residents for a continuous period of two years immediately preceding the date of
4 application for a loan under AS 16.10.300 - 16.10.370 for the repair, restoration, or
5 upgrading of existing vessels and gear, for the purchase of entry permits and gear, for
6 the purchase of quota shares for fisheries in or off the state, for the construction and
7 purchase of vessels or, to the extent allowed under (c) of this section, to satisfy past
8 due federal tax obligations that may result in the execution on and involuntary transfer
9 of the individual's entry permits if the individual either

10 (A) because of lack of training or lack of employment
11 opportunities in the area of residence, does not have occupational opportunities
12 available other than commercial fishing; or

13 (B) is economically dependent on commercial fishing for a
14 livelihood and commercial fishing has been a traditional way of life in the state
15 for the individual;

16 (2) adopt regulations necessary to carry out the provisions of
17 AS 16.10.300 - 16.10.370, including regulations to establish reasonable fees for
18 services provided and regarding loans for an entry permit and for which an entry
19 permit is used as collateral;

20 (3) establish amortization plans for repayment of loans, which may
21 include extensions for poor fishing seasons or for adverse market conditions for
22 Alaska products;

23 (4) enter into agreements with other state agencies or agencies of the
24 federal government to carry out the purposes of AS 16.10.300 - 16.10.370;

25 (5) enter into agreements with other state agencies to create an
26 outreach program to make loans under AS 16.10.300 - 16.10.370 in rural areas of the
27 state;

28 (6) allow an assumption of a loan if

29 (A) the applicant has been a state resident for a continuous
30 period of two years immediately preceding the date of the request for an
31 assumption; and

1 (B) approval of the assumption would be consistent with the
 2 purpose of AS 16.10.300 - 16.10.370; an applicant for a loan assumption may
 3 not be disqualified because the applicant does not meet the loan eligibility
 4 requirements of (1)(A) or (B) of this subsection;

5 (7) prequalify loan applicants for a limited entry permit loan or a quota
 6 shares loan and charge a fee not to exceed \$50 for prequalification;

7 (8) charge and collect the fees established under this subsection;

8 (9) refinance a debt obligation to another lender incurred by a
 9 borrower or borrowers if the borrower or borrowers otherwise qualify for a loan under
 10 AS 16.10.300 - 16.10.370; the department shall collect a refinancing loan origination
 11 charge of one-half of one percent of the amount of the debt obligation that has been
 12 refinanced when the first refinancing payment is due.

13 (b) In determining whether an individual commercial fisherman is reasonably
 14 likely to be able to repay a loan made under AS 16.10.300 - 16.10.370, the
 15 commissioner shall consider the individual commercial fisherman's income from
 16 commercial fishing and from all other sources.

17 (c) The department may not make a loan to an individual under (a)(1) of this
 18 section to satisfy past due federal tax obligations unless the individual has filed past
 19 and current federal tax returns with the federal government and has executed an
 20 agreement with the federal government for repayment of past due federal tax
 21 obligations. During an individual's lifetime, the individual may receive only one loan
 22 to satisfy past due federal tax obligations under (a)(1) of this section, whether under
 23 (a)(1) of this section or under any other former version of AS 16.10.310(a). A loan
 24 made under (a)(1) of this section to satisfy past due federal tax obligations may not
 25 exceed \$35,000.

26 * **Sec. 3.** AS 16.10.320(a) is amended to read:

27 (a) A [EXCEPT AS PERMITTED IN (h) OF THIS SECTION, A] loan under
 28 AS 16.10.300 - 16.10.370

29 (1) may not exceed an original [A] term of 15 years [, EXCEPT FOR
 30 EXTENSIONS UNDER AS 16.10.310(a)(4)];

31 (2) must bear a fixed annual rate of interest of not less than 6.5

1 **percent nor more than 10.5** [MAY NOT BEAR INTEREST EXCEEDING 10 1/2]
2 percent;

3 (3) **may not exceed \$35,000;**

4 (4) must be secured by a first priority lien and appropriate security
5 agreement;

6 (5) [(4)] may not exceed **80** [90] percent of the [APPRAISED] value,
7 **as determined by the department,** of the collateral used to secure the loan; and

8 (6) [(5)] may not be made to a person who has a past due child support
9 obligation established by court order or by the child support enforcement division
10 under AS 25.27.160 - 25.27.220 at the time of application.

11 * **Sec. 4.** AS 16.10.320(e) is amended to read:

12 (e) Two or more individual commercial fishermen who each satisfy the
13 requirements specified in **AS 16.10.311** [AS 16.10.310(a)(1)(B)] may jointly, whether
14 operating as a corporation, partnership, joint venture, or otherwise, obtain a
15 commercial fishing loan for the repair, restoration, or upgrading of an existing vessel
16 and gear, for the purchase of gear, and for the construction or the purchase of a fishing
17 vessel. Loans granted under this subsection may not exceed the amount specified in
18 **(a)** [(d)] of this section multiplied by the number of qualified commercial fishermen
19 applying for the loan.

20 * **Sec. 5.** AS 16.10.320 is amended by adding new subsections to read:

21 (k) An individual borrower may not be liable, at any one time or in any
22 capacity, for repayment of more than two loans made under AS 16.10.300 - 16.10.370.

23 (l) The department may not permit or record a payment in reduction of
24 principal to a loan for which any amount of interest due and payable has not been paid.

25 * **Sec. 6.** AS 16.10.325 is amended to read:

26 **Sec. 16.10.325. Guarantors.** A person may act as guarantor if the borrower
27 has insufficient collateral to secure a loan for the purposes described in **AS 16.10.311**
28 [AS 16.10.310(a)(1)(B) OR (C)]. The loan agreement **must** [shall] specifically
29 describe the property of the guarantor to be used as collateral by the borrower and
30 shall be signed by the guarantor and the borrower. The department shall provide the
31 guarantor with a copy of all notices sent to the borrower by the department. If the loan

1 is for the purchase of an entry permit or quota shares, the guaranty by the guarantor
 2 may not constitute a lien, mortgage, or encumbrance on or pledge of the entry permit
 3 or quota shares.

4 * **Sec. 7.** AS 16.10.333(a) is amended to read:

5 (a) Loans under **AS 16.10.311** [AS 16.10.310(a)] may be made to an
 6 individual commercial fisherman for the purchase of a limited entry permit upon
 7 certification by the commission that the fisherman is a person who qualifies as a
 8 transferee for the permit under AS 16.43 and the regulations adopted by the
 9 commission.

10 * **Sec. 8.** AS 16.10.335(a) is amended to read:

11 (a) If the debtor defaults upon a note for which a limited entry permit has been
 12 pledged as security under AS 16.10.333 or 16.10.338, the commissioner shall provide
 13 the debtor, by both certified and first class mail sent to the debtor's last known address
 14 on file with the commissioner, with a notice of default that includes

15 (1) a description of the security given for the note including the
 16 number assigned to the pledged permit by the commission;

17 (2) the date upon which the default occurred;

18 (3) the amount of the debtor's outstanding principal and interest as of
 19 the date of the default notice, the total amount remaining on the note less unearned
 20 interest, and the amount of daily interest;

21 (4) a statement that the debtor may, within 15 days after the postmark
 22 date of the notice, request a hearing to submit evidence showing the debtor has not
 23 defaulted;

24 (5) a statement that the note may be reinstated if it is brought current
 25 within 120 days after the postmark date of the notice;

26 (6) a statement that [, UNDER AS 16.10.310(a)(4),] the debtor may
 27 reinstate the note by submitting to the commissioner a plan of repayment if the
 28 commissioner accepts the debtor's plan of repayment;

29 (7) the place where reinstatement of the note or payment in full may be
 30 made; and

31 (8) a notice in at least 10-point bold type stating: IMPORTANT:

1 YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE
 2 SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE
 3 PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED
 4 AGAINST YOU.

5 * **Sec. 9.** AS 16.10.338 is amended to read:

6 **Sec. 16.10.338. Entry permits as collateral.** (a) Alaska limited entry
 7 permits may be used as security for loans under **AS 16.10.311** [AS 16.10.310(a)].
 8 The provisions of AS 16.10.335 and 16.10.337 apply to Alaska limited entry permits
 9 pledged as security for loans in accordance with this section.

10 (b) If a limited entry permit is pledged for security for a loan made under
 11 **AS 16.10.311** [AS 16.10.310(a)(1)(B)] for the repair, restoration, upgrading,
 12 construction, or purchase of a vessel and the borrower thereafter fails to make a
 13 payment or defaults, the commissioner shall, in addition to the notice provided under
 14 AS 16.10.335(a), notify the borrower that subject to the commissioner's acceptance the
 15 borrower may sell the vessel, apply the sales proceeds to the debt, and renegotiate
 16 payment of the balance due on the loan to avoid the immediate loss of the limited
 17 entry permit that has been pledged for security for the loan.

18 (c) If a limited entry permit is pledged for security for a loan made under
 19 **AS 16.10.311** [AS 16.10.310(a)(1)(C)] for the purchase of quota shares and the
 20 borrower thereafter fails to make a payment or defaults, the commissioner shall, in
 21 addition to the notice provided under AS 16.10.335(a), notify the borrower that subject
 22 to the commissioner's acceptance the borrower may sell the quota shares, apply the
 23 sales proceeds to the debt, and renegotiate payment of the balance due on the loan to
 24 avoid the immediate loss of the limited entry permit that has been pledged for security
 25 for the loan.

26 * **Sec. 10.** AS 16.10.340(a) is amended to read:

27 (a) There is a commercial fishing revolving loan fund to carry out the purpose
 28 of AS 16.10.300 - 16.10.370. **The commissioner shall administer the fund.**

29 * **Sec. 11.** AS 16.10.340 is amended by adding new subsections to read:

30 (d) There is established as a special account within the commercial fishing
 31 revolving loan fund the foreclosure expense account. The commissioner may expend

1 money credited to the foreclosure expense account when necessary to protect the
 2 state's security interest in collateral on loans granted under AS 16.10.300 - 16.10.370
 3 or to defray expenses incurred during foreclosure proceedings after a default by an
 4 obligor.

5 (e) On February 1 of each calendar year, the department shall submit to the
 6 legislature a report of summaries, analyses, and projections as of December 31 of the
 7 preceding calendar year that sets out the net cash balance of the fund available and
 8 necessary to carry out the purpose of AS 16.10.300 - 16.10.370 during the two fiscal
 9 years following the submission of the report.

10 (f) If the legislature determines that the fund contains money that is excess to
 11 that needed to carry out the purpose of AS 16.10.300 - 16.10.370 or for the orderly
 12 liquidation of all loans made under former provisions of AS 16.10.300 - 16.10.370 or
 13 of all assets owned or acquired in connection with those loans, then the legislature
 14 may appropriate the excess money for any public purpose.

15 * **Sec. 12.** AS 16.10 is amended by adding a new section to read:

16 **Sec. 16.10.345. Liquidation of loans and assets.** By September 1, 2002, the
 17 department shall initiate and undertake a process for the orderly liquidation of all loans
 18 made under former provisions of AS 16.10.300 - 16.10.370 and of all assets owned or
 19 acquired in connection with those loans by foreclosure or other means. The process
 20 for liquidation of the loans and assets must include strict administration of the loans
 21 and the remedies available under those loans and may also include

22 (1) negotiated sales of loans, loan-related assets, or assets acquired in
 23 foreclosure to financial institutions organized and operating under AS 06.05,
 24 AS 06.15, AS 06.45, or AS 44.81; however, loans secured by a limited entry permit
 25 and assets acquired by the department that are limited entry permits may only be sold
 26 to the Commercial Fishing and Agriculture Bank or a successor institution authorized
 27 by law to make loans secured by a limited entry permit;

28 (2) appointment of a financial institution organized and operating
 29 under AS 06.05, AS 06.15, AS 06.45, or AS 44.81 as an agent for the administration
 30 and collection of loans, subject to negotiation and establishment of a reasonable
 31 agency fee schedule for those services.

1 * **Sec. 13.** AS 16.10.353(b) is amended to read:

2 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370 [AFTER JUNE
3 28, 1991] may, by signing a form prepared for the purpose, designate the names of
4 persons and organizations to whom a copy of the notice required by AS 16.10.335
5 must be sent.

6 * **Sec. 14.** AS 16.10.355 is amended to read:

7 **Sec. 16.10.355. Disposal of property acquired by default or foreclosure.**

8 The department shall dispose of property acquired through default or foreclosure of a
9 loan made under AS 16.10.300 - 16.10.370, **former provisions of AS 16.10.300 -**
10 **16.10.370**, or former AS 16.10.650 - 16.10.720. Disposal shall be made in a manner
11 that serves the best interests of the state, and may include the amortization of
12 payments over a period of years, but may not be by lease.

13 * **Sec. 15.** (a) AS 16.10.310, 16.10.315, 16.10.320(b), 16.10.320(d), 16.10.320(h),
14 16.10.320(i), 16.10.339, 16.10.340(c), 16.10.342, 16.10.350, and 16.10.520(f) are repealed.

15 (b) Sections 3, 4, and 6, ch. 127, SLA 2000, are repealed.

16 * **Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to
17 read:

18 **SAVING.** Nothing in this Act may impair the rights and duties, as they existed before
19 the effective date of this Act, of parties to loans entered into under provisions of AS 16.10.300
20 - 16.10.370 that are amended or repealed by this Act. A loan entered into under provisions of
21 AS 16.10.300 - 16.10.370 that are amended or repealed by this Act is subject to those terms
22 and provisions of AS 16.10.300 - 16.10.370 and the loan agreement that was in effect when
23 the loan was originally made or subsequently modified by the state and the borrower unless
24 the loan agreement is amended after the effective date of this Act and the parties expressly
25 agree to be bound by provisions of AS 16.10.300 - 16.10.370 that are in effect on the date that
26 the loan agreement is amended.

27 * **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to
28 read:

29 **CONDITIONAL RETROSPECTIVITY.** If this Act takes effect on or after August 1,
30 2002, sec. 15(b) of this Act is retrospective to July 31, 2002.

31 * **Sec. 18.** This Act takes effect July 1, 2002.