

HOUSE BILL NO. 304

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

BY REPRESENTATIVE COGHILL

Introduced: 5/7/05

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

10 (A) either

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

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

17 (B) has submitted a substantially identical application for a
18 loan to two private commercial lenders, one of which must be the Alaska
19 Commercial Fisheries and Agriculture Bank, and has been denied a loan by
20 both private lenders;

21 (2) make loans for the purchase of fishing quota shares by a
22 community quota entity eligible under federal statute or regulation to purchase the
23 fishing quota shares if the community quota entity is not eligible or qualified for
24 financing from other recognized commercial lending institutions to purchase the
25 fishing quota shares;

26 (3) adopt regulations necessary to carry out the provisions of
27 AS 16.10.300 - 16.10.370, including regulations to establish reasonable fees for
28 services provided and regarding loans for an entry permit and for which an entry
29 permit is used as collateral;

30 (4) establish amortization plans for repayment of loans, which may
31 include extensions for poor fishing seasons or for adverse market conditions for

1 Alaska products;

2 (5) enter into agreements with other state agencies or agencies of the
3 federal government to carry out the purposes of AS 16.10.300 - 16.10.370;

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

7 (7) allow an assumption of a loan if

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

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

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

17 (9) charge and collect the fees established under this subsection;

18 (10) refinance a debt obligation, not to exceed \$100,000, to another
19 lender incurred by a borrower or borrowers if the borrower or borrowers otherwise
20 qualify for a loan under AS 16.10.300 - 16.10.370; the department shall collect a
21 refinancing loan origination charge of one-half of one percent of the amount of the
22 debt obligation that has been refinanced when the first refinancing payment is due.

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

27 (c) The department may not make a loan to an individual under (a)(1) of this
28 section to satisfy past due federal tax obligations unless the individual has filed past
29 and current federal tax returns with the federal government and has executed an
30 agreement with the federal government for repayment of past due federal tax
31 obligations. During an individual's lifetime, the individual may receive only one loan

1 to satisfy past due federal tax obligations under (a)(1) of this section, whether under
 2 (a)(1) of this section or under any version of former AS 16.10.310(a). A loan made
 3 under (a)(1) of this section to satisfy past due federal tax obligations may not exceed
 4 \$35,000.

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

6 (a) Except as permitted in **(d)** [(h)] of this section, a loan under AS 16.10.300
 7 - 16.10.370

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

10 (2) **must bear a fixed annual rate of interest of not less than 6.5**
 11 **percent nor more than 10.5** [MAY NOT BEAR INTEREST EXCEEDING 10 1/2]
 12 percent;

13 (3) **may not exceed \$100,000;**

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

16 (5) [(4)] may not exceed **80** [90] percent of the [APPRAISED] value,
 17 **as determined by the department,** of the collateral used to secure the loan; and

18 (6) [(5)] may not be made to a person who has a past due child support
 19 obligation established by court order or by the child support services agency under
 20 AS 25.27.160 - 25.27.220 at the time of application.

21 * **Sec. 4.** AS 16.10.320(d) is amended to read:

22 (d) [THE TOTAL OF BALANCES OUTSTANDING ON LOANS MADE
 23 TO A BORROWER UNDER AS 16.10.310(a)(1)(A) MAY NOT EXCEED \$300,000.
 24 THE TOTAL OF BALANCES OUTSTANDING ON LOANS MADE TO A
 25 BORROWER UNDER AS 16.10.310(a)(1)(B) MAY NOT EXCEED \$100,000. THE
 26 TOTAL BALANCES OUTSTANDING ON LOANS MADE TO A BORROWER
 27 UNDER AS 16.10.310(a)(1)(C) MAY NOT EXCEED \$300,000. THE TOTAL OF
 28 BALANCES OUTSTANDING ON LOANS MADE TO A BORROWER UNDER
 29 AS 16.10.310(a)(1)(D) TO SATISFY PAST DUE FEDERAL TAX OBLIGATIONS
 30 MAY NOT EXCEED \$30,000.] The total of balances outstanding on loans made
 31 under **AS 16.10.311(a)(2)** [AS 16.10.310(a)(1)(E)] may not exceed \$2,000,000 per

1 community eligible under federal statute or regulation to establish or participate in the
 2 establishment of a community quota entity. [EXCLUDING LOANS MADE UNDER
 3 AS 16.10.310(a)(1)(C), (D), AND (E), THE TOTAL OF BALANCES
 4 OUTSTANDING ON ALL LOANS, INCLUDING DEBT REFINANCING UNDER
 5 AS 16.10.310(a), MADE TO A BORROWER UNDER AS 16.10.300 - 16.10.370
 6 MAY NOT EXCEED \$300,000.]

7 * **Sec. 5.** AS 16.10.320(e) is amended to read:

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

16 * **Sec. 6.** AS 16.10.320 is amended by adding new subsections to read:

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

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

21 * **Sec. 7.** AS 16.10.325 is amended to read:

22 **Sec. 16.10.325. Guarantors.** A person may act as guarantor if the borrower
 23 has insufficient collateral to secure a loan for the purposes described in **AS 16.10.311**
 24 [AS 16.10.310(a)(1)(B) OR (C)]. The loan agreement **must** [SHALL] specifically
 25 describe the property of the guarantor to be used as collateral by the borrower and
 26 shall be signed by the guarantor and the borrower. The department shall provide the
 27 guarantor with a copy of all notices sent to the borrower by the department. If the loan
 28 is for the purchase of an entry permit or quota shares, the guaranty by the guarantor
 29 may not constitute a lien, mortgage, or encumbrance on or pledge of the entry permit
 30 or quota shares.

31 * **Sec. 8.** AS 16.10.333(a) is amended to read:

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

6 * **Sec. 9.** AS 16.10.335(a) is amended to read:

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

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

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

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

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

20 (5) a statement that the note may be reinstated if **the note** [IT] is
 21 brought current within 120 days after the postmark date of the notice;

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

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

27 (8) a notice in at least 10-point bold type stating: IMPORTANT:
 28 YOUR FAILURE TO REINSTATE OR PAY THIS NOTE IN FULL BY THE DATE
 29 SPECIFIED WILL RESULT IN A FORFEITURE OF ALL RIGHTS TO THE
 30 PERMIT AND THE POSSIBILITY OF LEGAL ACTION BEING INSTITUTED
 31 AGAINST YOU.

1 * **Sec. 10.** AS 16.10.338 is amended to read:

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

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

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

22 * **Sec. 11.** AS 16.10.340(a) is amended to read:

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

25 * **Sec. 12.** AS 16.10.340 is amended by adding new subsections to read:

26 (d) There is established as a special account within the commercial fishing
27 revolving loan fund the foreclosure expense account. The commissioner may expend
28 money credited to the foreclosure expense account when necessary to protect the
29 state's security interest in collateral on loans granted under AS 16.10.300 - 16.10.370
30 or to defray expenses incurred during foreclosure proceedings after a default by an
31 obligor.

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

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

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

12 (b) A person obtaining a loan under AS 16.10.300 - 16.10.370 [AFTER JUNE
 13 28, 1991] may, by signing a form prepared for the purpose, designate the names of
 14 persons and organizations to whom a copy of the notice required by AS 16.10.335
 15 must be sent.

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

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

18 The department shall dispose of property acquired through default or foreclosure of a
 19 loan made under AS 16.10.300 - 16.10.370, **former provisions of AS 16.10.300 -**
 20 **16.10.370,** or former AS 16.10.650 - 16.10.720. Disposal shall be made in a manner
 21 that serves the best interests of the state, and may include the amortization of
 22 payments over a period of years, but may not be by lease.

23 * **Sec. 15.** AS 16.10.310, 16.10.315, 16.10.320(b), 16.10.320(h), 16.10.320(i), 16.10.339,
 24 16.10.340(c), 16.10.342, 16.10.350, and 16.10.520(f) are repealed.

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

27 **SAVING.** Nothing in this Act may impair the rights and duties, as they existed before
 28 the effective date of this Act, of parties to loans entered into under provisions of AS 16.10.300
 29 - 16.10.370 that are amended or repealed by this Act. A loan entered into under provisions of
 30 AS 16.10.300 - 16.10.370 that are amended or repealed by this Act is subject to those terms
 31 and provisions of AS 16.10.300 - 16.10.370 and the loan agreement that were in effect when

1 the loan was originally made or subsequently modified by the state and the borrower unless
2 the loan agreement is amended after the effective date of this Act and the parties expressly
3 agree to be bound by provisions of AS 16.10.300 - 16.10.370 that are in effect on the date that
4 the loan agreement is amended.

5 * **Sec. 17.** This Act takes effect July 1, 2006.