

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: 4/10/14

Referred: Rules

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 44.81.020(a) is amended to read:

5 (a) The bank shall be governed by a board of directors consisting of seven to
6 nine natural persons. The number is determined by the bank's bylaws. Two board
7 members shall be appointed by the governor of the state. The other board members
8 shall be elected by the members of the bank as provided in the bank's bylaws, except
9 that at least one of the elected board members must be a resident farmer. **The board**
10 **members appointed under this section must be residents of the state and meet the**
11 **requirements of AS 39.05.100.**

12 *** Sec. 2.** AS 44.81.215 is amended to read:

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

14 (1) make loans to individuals, including married couples, who are

1 residents of the state and who are engaged in commercial agriculture or fishing,
2 including harvesters, processors, suppliers, and marketers, if at least one of the
3 primary obligors on the loan is a member of the bank;

4 (2) make loans to corporations, partnerships, or limited liability
5 companies engaged in commercial agriculture or fishing if the majority interest of the
6 corporation, partnership, or limited liability company is beneficially owned by
7 residents of the state and a majority of the owners are residents of the state, and if at
8 least one of the primary obligors on a loan is a member of the bank; however, the bank
9 may not make a loan under this paragraph to a corporation, partnership, or limited
10 liability company for the purchase of a new or existing fishing boat or for the repair or
11 renovation of an existing fishing boat if the primary purpose of the fishing boat is to
12 commercially harvest fishery resources, unless the corporation, partnership, or limited
13 liability company is wholly owned and controlled by residents of the state, and unless
14 at least one of the primary obligors on the loan is a member of the bank;

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

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

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

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

1 member of the bank;

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

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

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

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

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

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

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

31 (14) issue certificates of loan participation to members and to other

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

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

9 **(A) the individuals will use the loan proceeds to**
 10 **commercially engage in the operation in the state;**

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

12 **(C) at least one of the primary obligors on the loan is a**
 13 **member of the bank;**

14 **(16) make a loan to a corporation, partnership, or limited liability**
 15 **company for a tourism-related operation when a majority of the owners of the**
 16 **corporation, partnership, or limited liability company are not residents of the**
 17 **state, if**

18 **(A) the corporation, partnership, or limited liability**
 19 **company will use the loan proceeds to commercially engage in the**
 20 **operation in the state;**

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

22 **(C) at least one of the primary obligors on the loan is a**
 23 **member of the bank; and**

24 **(D) the majority interest in the corporation, partnership, or**
 25 **limited liability company is beneficially owned by residents of the United**
 26 **States;**

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

30 **(A) the individuals will use the loan proceeds to**
 31 **commercially engage in the operation in the state;**

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

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

4 (18) make a loan to a corporation, partnership, or limited liability
5 company in which a majority of the owners of the corporation, partnership, or
6 limited liability company are not residents of the state, if the loan is for an
7 operation that is dedicated to the development or exploitation of natural
8 resources, and

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

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

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

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

18 * **Sec. 3.** AS 44.81.215 is amended by adding new subsections to read:

19 (b) When the bank is determining whether to make a loan, if a loan applicant
20 intends to use the proposed loan collateral primarily in a salmon fishery, the bank shall
21 consider, as part of its determination, whether the principles of conservation and
22 sustained yield will limit the potential borrower's ability to repay the loan in a timely
23 manner.

24 (c) Before making a loan under this section, the board must find that the loan
25 will not result in the displacement of an existing Alaskan-owned business.

26 * **Sec. 4.** AS 44.81.225(a) is amended to read:

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

1 * **Sec. 5.** AS 44.81.225(b) is amended to read:

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

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

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

8 * **Sec. 6.** AS 44.81.225(c) is amended to read:

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

11 * **Sec. 7.** AS 44.81.260(a) is amended to read:

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

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

18 (2) under AS 44.81.270 **and 44.81.275**;

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

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

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

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

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

1 or borrower;

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

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

8 * **Sec. 8.** AS 44.81.260 is amended by adding a new subsection to read:

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

12 * **Sec. 9.** AS 44.81 is amended by adding a new section to read:

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

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

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

1 commissioner's notice of the assessment.

2 (d) In this section,

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

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

7 * **Sec. 10.** AS 44.81.020(f) is repealed.

8 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
9 read:

10 EXAMINATIONS. Notwithstanding AS 44.81.275, added by sec. 9 of this Act, the
11 Department of Commerce, Commerce, and Economic Development may not conduct an
12 examination under AS 44.81.275, added by sec. 9 of this Act, until on or after the date that is
13 one year after the effective date of this Act.

14 * **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).