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BY MOSES, HILLSTRAND AND  
TILLION

1 IN THE HOUSE

2 HOUSE BILL NO. 187

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act creating an Alaska State Fishery Development  
7 Corporation."

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

9 \* Section 1. AS 44 is amended by adding a new chapter to read:

10 CHAPTER 61. ALASKA STATE FISHERY DEVELOPMENT CORPORATION.

11 ARTICLE 1. CREATION AND ORGANIZATION.

12 Sec. 44.58.010. ALASKA STATE FISHERY DEVELOPMENT CORPORATION.

13 The Alaska State Fishery Development Corporation is a public corpora-  
14 tion of the state. The corporation is an instrumentality of the state  
15 within the Department of Commerce, but has a legal existence independent  
16 of and separate from the state.

17 Sec. 44.58.020. GOVERNING BODY. The corporation's board of  
18 directors shall conduct the business of the corporation.

19 Sec. 44.58.030. APPOINTMENT AND COMPOSITION OF BOARD. (a) The  
20 board consists of the commissioners of commerce and fish and game and  
21 six residents of the state with one member from Southeastern Alaska,  
22 Prince William Sound, Cook Inlet, Kodiak, Aleutian Islands and Bristol  
23 Bay. Members of the board are appointed by the governor and serve at  
24 his pleasure. Membership on the board is on a nonpartisan basis.

25 (b) The appointment of members to the board must be confirmed by  
26 the legislature meeting in joint session. A member may act and receive  
27 compensation from his appointment until his confirmation or rejection  
28 by the legislature.

29 (c) A public employee is not eligible for appointment to the board.

1           Sec. 44.58.040. TERM OF OFFICE. The term of office for an  
2 appointed member of the board is three years. The term of office  
3 expires on February 1 of each year. Upon initial appointment, two  
4 members serve for one year, two members serve for two years, and two  
5 members serve for three years. A member appointed by the governor to  
6 fill a vacancy serves for the unexpired term of the member he succeeds.

7           Sec. 44.58.050. CONFLICT OF INTERESTS. Upon appointment and  
8 during his term of office, a board member shall declare privately in  
9 writing to the governor and the board any financial or business interest  
10 he has which might conflict with the public nature of his membership on  
11 the board. If there is a serious conflict, the board may ask him to  
12 abstain from decisions resulting in a conflict or to resign from the  
13 board. A loan or contract of the corporation which is otherwise valid  
14 is not invalid because of a personal interest of a board member in it  
15 if the interest is declared and the board member abstains from decisions  
16 pertaining to the loan or contract.

17           Sec. 44.58.060. OFFICERS. At the first regular meeting of every  
18 odd-numbered year, the board shall meet and elect from among its members  
19 a president, a vice president, a secretary, and a treasurer. The presi-  
20 dent also serves as chairman of the board. The vice president shall  
21 preside in the absence of the president.

22           Sec. 44.58.070. COMPENSATION AND EXPENSES. Members of the board  
23 receive no salary, but are entitled to per diem and travel expenses  
24 authorized by law for other boards.

25           Sec. 44.58.080. LEGAL ADVISER. The attorney general is the legal  
26 counsel for the corporation. He shall advise the corporation in legal  
27 matters and represent it in suits.

28           Sec. 44.58.090. PUBLIC BOARD MEETINGS. The meetings of the board  
29 are public except meetings to discuss and pass on loan applications.

1           Sec. 44.58.100. QUORUM AND NOTICE OF MEETINGS. Five members,  
2 which may include the commissioner of commerce or commissioner of fish  
3 and game, constitute a quorum for the transaction of business unless  
4 the bylaws require a larger number, except that notice of a meeting of  
5 the board must be given to each member.

6           Sec. 44.58.110. MINUTES OF MEETINGS. The board shall keep minutes  
7 of each meeting and send a certified copy to the governor.

8           Sec. 44.58.120. EXECUTIVE VICE PRESIDENT. The board may employ an  
9 executive vice president to manage the corporation. He must be profes-  
10 sionally trained and experienced in the performance of his duties. His  
11 selection is subject to the approval of the governor. The executive vice  
12 president may not have any financial or business interest that might con-  
13 flict with the management of the corporation in the best public interest.  
14 The board may delegate powers and duties to the executive vice president.

15           Sec. 44.58.130. EMPLOYEES' BONDS. The corporation shall bond its  
16 employees. The amount of a bond is determined by the board.

17                           ARTICLE 2. POWERS AND DUTIES.

18           Sec. 44.58.140. POWERS. (a) The corporation may

- 19                           (1) exist continuously as a corporation;  
20                           (2) adopt a seal;  
21                           (3) adopt bylaws and regulations governing the business of  
22 the corporation;  
23                           (4) sue and be sued;  
24                           (5) appoint officers, employees, trustees for certificate  
25 holders, and agents, and prescribe their powers and duties;  
26                           (6) make contracts and execute instruments necessary or  
27 convenient in the exercise of its corporate powers;  
28                           (7) make loans in participation with financial institutions,  
29 and establish and regulate the terms of the loans;

1 (8) acquire by purchase, lease, bequest, devise, gift, the  
2 satisfaction of debts, or the foreclosure of mortgages, and hold, main-  
3 tain, use, operate, and convey real or personal property;

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

8 (10) secure the payment of its obligations by pledge or  
9 mortgage or other lien on its contracts, revenues, income, or property,  
10 except that it may not incur secondary liability by guaranty or endorse-  
11 ment of the obligations of another corporation or legal entity, except  
12 endorsement of checks, bank drafts, or other commercial paper in the  
13 ordinary course of business;

14 (11) accept grants on loans from and contract with the  
15 federal government, the state, or its political subdivisions, and to  
16 that end comply with the provisions of federal, state, or local programs  
17 when necessary;

18 (12) lease, alienate, and dispose of property;

19 (13) acquire, hold, and dispose of stocks, memberships, con-  
20 tracts, bonds, or other interests in another corporation or legal entity  
21 and exercise the powers or rights in connection with these interests  
22 which are provided in contracts or agreements and which are allowed by  
23 law concerning the satisfaction of debts;

24 (14) do what is necessary to carry out the powers granted by  
25 this chapter or other acts of the Alaska legislature, or the laws and  
26 regulations of the federal government.

27 (b) The corporation may not pledge the credit or the taxing power  
28 of the state or its political subdivisions. The state and its political  
29 subdivisions are not liable for the debts of the corporation.

1           Sec. 44.58.150. ANNUAL REPORT AND PUBLIC RECORDS. (a) Before  
2 December 1 of each year, the board shall submit to the governor and the  
3 legislature a comprehensive report describing the operations, fiscal  
4 transactions, financial condition, and future plans of the board. The  
5 governor may prescribe the form of the report.

6           (b) The board shall maintain the following records which shall  
7 be available to the public:

- 8                   (1) the names of the business concerns to whom contracts  
9 are let and for whom financing is arranged by the corporation;  
10                   (2) the nature of the business;  
11                   (3) the amount involved.

12           Sec. 44.58.160. ANNUAL AUDITS. (a) The board shall have its  
13 financial records audited annually. The legislative auditor shall  
14 conduct the annual audit. If an audit conducted by a certified public  
15 accountant is satisfactory in the judgment of the legislative auditor,  
16 it may be accepted instead of the state audit. The legislative auditor  
17 may prescribe the form and content of the financial records of the  
18 board and may have access to these records at any time.

19           (b) The state bank examiner shall examine the records of the  
20 corporation at least annually.

21           Sec. 44.58.170. LOAN ADVISORY COMMITTEES. The board may estab-  
22 lish loan advisory committees in the different regions of the state.  
23 Members of these committees serve without compensation or per diem.  
24 Each committee shall make recommendations to the board and advise it  
25 generally.

26           Sec. 44.58.180. LOCATION OF OFFICES. The principal office of the  
27 corporation is at the state capital. The board may establish offices  
28 at other locations in the state.

29           Sec. 44.58.190. INITIAL CAPITAL. Appropriations and loans from

1 the state general fund necessary for the initial operation of the  
2 corporation are authorized.

3 Sec. 44.58.200. DEBENTURE CERTIFICATES. (a) The corporation may  
4 issue three classes of negotiable debenture certificates as provided  
5 by this section.

6 (b) "Class A certificate" shall be issued as evidence of indebted-  
7 ness of the corporation either through private or public sales. The  
8 maximum principal amount of class A certificates that may be sold is  
9 \$5,000,000. Class A certificates are backed by the full resources and  
10 credit of the corporation, and take priority in the payment of principal  
11 and interest to class B and C certificates. Class A certificates shall  
12 be sold at a price which results in an effective interest rate over the  
13 life of the certificates of not more than five per cent a year and upon  
14 other terms set by the board, except that the class A certificate out-  
15 standing at any time may not exceed five times the principal amount of  
16 class B certificates outstanding.

17 (c) "Class B certificates" shall be issued as evidence of indebted-  
18 ness of the corporation either through private or public sales. The  
19 maximum principal amount of class B certificates that may be sold is  
20 \$1,000,000. Class B certificates are backed by the full resources and  
21 credit of the corporation and take priority in the payment of principal  
22 and interest to class C certificates. Class B certificates shall be  
23 sold at a price which results in an effective interest rate over the  
24 life of the certificates of not more than six per cent a year and upon  
25 other terms set by the board.

26 (d) "Class C certificates" shall be accepted by a borrower of  
27 funds from the corporation at the time of a development loan instead  
28 of cash in an amount equal to five per cent of the loan. Class C  
29 certificates mature not later than the outstanding class B certificates

1 mature. The board determines the rate of interest earned by class C  
2 certificates. The corporation shall deposit the funds represented by  
3 the class C certificates in a time deposit account. The funds repre-  
4 sented by class C certificates are a reserve for loan losses. The  
5 funds shall not be drawn unless the corporation first exhausts the  
6 reserve funds provided by secs. 260 and 270 of this chapter. Class C  
7 certificates shall not be issued when corporate money is invested in  
8 accordance with secs. 290 and 320 of this chapter.

9 Sec. 44.58.210. LEGAL OPINION. The corporation shall provide a  
10 legal opinion from a recognized private source concerning class A and B  
11 certificates.

12 Sec. 44.58.220. AVAILABILITY OF ANNUAL REPORT. The annual report  
13 of the corporation shall be made available without cost to a certificate  
14 holder.

15 Sec. 44.58.230. CERTIFICATES AS LEGAL INVESTMENTS. The certifi-  
16 cates of the corporation are legal investments and may be accepted as  
17 security for all fiduciary, trust, and public funds of the state and  
18 its political subdivisions.

19 Sec. 44.58.240. COMMENCEMENT OF LOAN ACTIVITIES. The corporation  
20 may not commence its loan activities until it has received at least  
21 \$1,500,000 from the sale of class A and B certificates. Before the  
22 receipt of this \$1,500,000, funds received from the sale of class A  
23 and B certificates shall be held in trust.

24 Sec. 44.58.250. GENERAL FUND. The corporation shall maintain a  
25 general fund. Income received from loans and investments, and advances  
26 or loans from the state shall be credited to the fund. Expenses of  
27 the corporation, including interest payments on class A, B and C  
28 certificates, and repayments of advances or loans from the state shall  
29 be charged to this fund.

1           Sec. 44.58.260. PRINCIPAL RESERVE FUND. The corporation shall  
2 maintain a principal reserve fund. The board shall determine the  
3 amounts, sources and application of principal reserve funds to the  
4 amortization of class A and B certificates. No sinking or amortiza-  
5 tion fund may be created for class B certificates until an amount equal  
6 to the total principal amount of the three largest annual maturities on  
7 the class A certificates is set aside to secure the payment of class A  
8 certificates. Surplus money may be transferred to the development loan  
9 fund.

10           Sec. 44.58.270. LOAN LOSS RESERVE FUND. The corporation shall  
11 maintain a loan loss reserve fund. Each year the board shall credit  
12 a sum equal to one-fourth per cent of all outstanding loans to the  
13 fund. Loan losses shall be charged to the loan loss reserve fund. If  
14 a loan loss charged to the fund is recovered, it shall be credited to  
15 the loan loss reserve fund. Money in the general fund exceeding the  
16 estimated expenses of the following fiscal year shall be transferred  
17 to the loan loss reserve fund.

18           Sec. 44.58.280. DEVELOPMENT LOAN FUND. The corporation shall  
19 maintain a development loan fund. Money not required by other funds  
20 shall be credited to the development loan fund. Loans by the corpora-  
21 tion shall be charged to the development loan fund.

22           Sec. 44.58.290. INVESTMENTS BY CORPORATION. (a) The corporation  
23 shall place money held in the reserve funds in one or more of the  
24 following: deposits in banks or trust companies having their principal  
25 places of business in the state; or obligations of the United States,  
26 the state, or its political subdivisions if the obligations are secured  
27 by the general taxing power of the obligor.

28           (b) The corporation may place the proceeds from the sale of  
29 class A and B certificates and money held in the development loan fund

1 in one or more of the following: deposits in banks or trust companies  
2 having their principal places of business in the United States; or  
3 obligations of the United States, the state, or its political sub-  
4 divisions. However, the board shall, when it is possible and finan-  
5 cially sound, make deposits in banks and trust companies having their  
6 principal places of business in the state.

7 Sec. 44.58.300. TAX EXEMPTION. Because the purpose of the  
8 corporation, as an instrumentality of the state, is to benefit the  
9 people of Alaska by increasing their commerce, prosperity, and general  
10 well-being, the corporation is exempt from all taxes and assessments in  
11 the state. Debenture certificates issued by the corporation, their  
12 transfer, and their income are exempt from taxes and assessments.

13 Sec. 44.58.310. CORPORATE LENDING. (a) The corporation may  
14 accept applications for development loans and extend credit on the basis  
15 of no greater than 90 per cent participation by the corporation and no  
16 less than 10 per cent participation by a bank.

17 (b) The corporation and the participating bank shall share the  
18 same ratable interest in the collateral securing a loan.

19 Sec. 44.58.320. SHORT-TERM LOANS. The corporation may participate  
20 with banks in existing, short-term, development loans with its surplus  
21 funds on the same basis as provided in sec. 310 of this chapter. The  
22 intention of this section is to permit the corporation to use funds not  
23 immediately necessary for long-term development loan purposes and to  
24 receive income to meet its financial obligations.

25 Sec. 44.58.330. CORPORATION'S INTEREST. The rate of interest  
26 charged for the corporation's share of a development loan shall be  
27 determined by the board, except that it may not be greater than the  
28 legal contract rate of interest as set by state law. The corporation  
29 may also charge reasonable loan commitment fees.

1           Sec. 44.58.340. BANK'S RATE OF INTEREST. The participating bank  
2 shall fix the rate of interest charged by it. However, the rate of  
3 interest may not exceed the legal contract rate of interest prescribed  
4 by law.

5           Sec. 44.58.350. MAXIMUM TERM OF LOAN. The maximum term of a  
6 development loan is 20 years. However, a loan may not mature later  
7 than the final maturity date of the class A and B certificates out-  
8 standing at the time of the loan.

9           Sec. 44.58.360. APPLICATION FOR LOAN. Development loans must be  
10 applied for and presented to the corporation for approval through the  
11 participating bank.

12           Sec. 44.58.370. BANK'S FEES. (a) The participating bank shall  
13 administer the loans and may charge the borrower a reasonable loan fee  
14 for this service.

15           (b) The corporation shall enter into a servicing agreement with a  
16 participating bank. The servicing agreement may provide a participating  
17 bank with a fee equal to one-quarter of one per cent interest on the  
18 corporation's share of the loan.

19           Sec. 44.58.380. MAXIMUM AMOUNT OF INDIVIDUAL LOANS. The corpora-  
20 tion may not have more than 10 per cent of the principal amount of  
21 outstanding class A and B certificates or \$750,000, whichever is less,  
22 outstanding at one time to any one borrower. The borrowing of indivi-  
23 duals who hold a controlling interest in a borrowing company is added  
24 to the debt of the company to determine this limitation.

25           Sec. 44.58.390. GENERAL LIMITATIONS ON LOANS. (a) In making  
26 development loans, the board shall consider the proposed collateral, the  
27 integrity and the management ability of the borrower, and the borrower's  
28 past and prospective earnings.

29           (b) Before approving a development loan, the board shall consider

1 purpose of the loan. The board may make only loans that are economically  
2 advantageous to the state and the general public welfare.

3 (c) The board may make a development loan to a responsible borrower  
4 only if other credit is not readily available on reasonable terms.  
5 Before granting a development loan, the board shall determine, so far  
6 as it is reasonably possible, that the first opportunity to grant the  
7 loan is given to banking or financial institutions in the state.

8 Sec. 44.58.400. REGULATIONS FOR LOANS. The board may adopt  
9 regulations for loan policy and procedure, except that a regulation  
10 may not conflict with an indenture agreement or a provision of this  
11 chapter.

12 Sec. 44.58.410. ADDITIONAL SECURITIES. The legislature may amend  
13 this chapter to permit the corporation to issue additional series of  
14 securities, except that additional securities may not rely on assets  
15 accumulated in connection with the issuance of a previous series of  
16 securities, unless the reserves provided by agreements, this chapter,  
17 or legislation have been met.

18 Sec. 44.58.420. DISSOLUTION. After payment in full of its  
19 debentures and other obligations or after depositing in a trust  
20 sufficient money to secure the payment of its obligations, the board  
21 may dissolve the corporation by the majority vote of its directors.  
22 Dissolution is not effective until the legislature confirms it. The  
23 effective date of dissolution is the date the legislature confirms  
24 the dissolution or a date determined by the legislature at the time  
25 of confirmation. Assets remaining after satisfaction of liabilities  
26 and obligations of the corporation shall be deposited to the credit  
27 of the general fund of the state.

28 Sec. 44.58.430. PURPOSE. The purpose of this chapter is to  
29 create an instrumentality of the state to develop, stimulate, and

1 advance the business prosperity and economic welfare of Alaska and its  
2 citizens. This shall be accomplished by providing critically needed  
3 development loans to encourage and assist the wholesome development of  
4 new fishing activities in Alaska and to rehabilitate and expand existing  
5 fishing operations. By providing development loans to the fishing  
6 industry the economic stability of the state will be strengthened, the  
7 employment opportunities of its citizens enlarged, and their standard  
8 of living and general welfare enhanced.

9 Sec. 44.58.440. DEFINITIONS. In this chapter

10 (1) "corporation" means the Alaska State Fishery Development  
11 Corporation;

12 (2) "state" means the State of Alaska;

13 (3) "board" means the board of directors of the corporation.  
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